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APPENDIX C

No. 71-9622

WILLIAM DONALD KELLEY, et al,
Petitioners,

v.

THE TEXAS STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

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Attorney for Petitioners,
William Donald Kelley, et al.

ONE ANSWER TO CANCER

Doctor William Donald Kelley

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The Kelley Research
Foundation
P.O. Box 98, Grapevine, Texas 76051

ONE ANSWER TO CANCER

AN ECOLOGICAL APPROACH TO THE SUCCESSFUL TREATMENT OF MALIGNANCY

by William Donald Kelley, D.D.S., M.S.

THE KELLEY RESEARCH FOUNDATION
1969

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THIS BOOK
IS
DEDICATED TO

YOU, WHO HAVE PRAYED FOR RELIEF FOR YOURSELF, YOUR LOVED ONES, OR FRIENDS. THIS IS WRITTEN THAT YOU MAY TELL THEM THAT YOUR PRAYERS HAVE BEEN ANSWERED – AND THAT ALL IS WELL .....

AND SO IT IS.

PREFACE

HEALTH is a wonderful possession. It does not last forever – although most of us assume it will. It is not until we lose our health that we seek diligently to regain it. Often it is too late, and always too expensive.

It is the purpose of the Kelley Research Foundation to help those who desire better health and who are willing to work for their better health. It is ever the objective of the Foundation to treat the person who has the disease, not to treat the disease who has the person.

It is our desire to advise, teach, and counsel a person in such a way that he and he alone is responsible for his health. A doctor cannot cure you of anything. If you have a broken arm the physician may set it – but only you – your own body – may "cure" or heal the break. Of course, during your lifetime you will need the help of many in the healing professions: the physician, the dentist, the osteopath, the chiropractor, the naturopath, the biochemist, the nutritionist, the nurse, the therapist; and last, but not least, the spiritual counselor. Although these may give you aid, you must assume the responsibility of accepting and following their advice.

In researching some of the more complex disease processes, it became more and more evident to us that cancer was a simple deficiency disease. We have proven this to our own satisfaction, and to the satisfaction of many patients.

This publication is a simplified, condensed, practical application of our investigations and findings. We present these findings because there have been so many prayers unto God for a solution to this simple problem. In the long run, YOU, the people, will have to gently guide the medically trained men to accept such a simple thesis on cancer.

To successfully treat cancer, however simple, is a tedious and lengthy nutritional process. It is not expensive as compared to the "accepted" surgical, radiological, or chemo-therapy methods, and has proven very effective.

It is our desire that this booklet be a helpful aid to many who are themselves or have loved ones afflicted with malignancy.

P.O. Box 89
Grapevine, Texas 76051
December 1967

William Donald Kelley

CHAPTER I

"PHYSICIAN HEAL THYSELF"

Jesus the Christ said, "Physician Heal Thyself." What is the true teaching behind this beautiful saying? What was Jesus really trying to say? It involves the true meaning of cure – cure for anything. It is so often said, "I went to Dr. Jones and he cured me." Nothing could be further from the truth. No matter how many years a doctor has gone to school, no matter how many college degrees he may have, a doctor can cure only one person – HIMSELF. It is important that you understand that only you can cure you of anything!

It is you and your body chemistry that cures you of your disease. In doing this you must take note that you are physical, mental, and spiritual; each facet plays a part in your cure. Your physician or clinician can only bring to your attention some of the basic laws of God concerning health. Unfortunately many clinicians do not know the laws of God concerning health, even though they are honest and sincere and ever try their hardest.

God's Law of Gravity is in effect when you jump off a 21-story building, whether you understand that before you jump or not. You will surely plunge to earth with such force that it will destroy you unless you involve another law of God counteracting the Law of Gravity.

In light of Jesus' teaching, "Physician Heal Thyself," I can truthfully say that I have cured or healed myself of cancer (malignancy). I can cure myself again if it ever becomes necessary. Better still, I have learned God's Law of Health concerning malignancy (cancer) and I will ever invoke this Law that I will not have the disease again.

Although I am a clinician, I have no intention of treating anyone for cancer. I am even more than the clinician – I am the *teacher*. It is, therefore, the purpose of this publication to instruct you in God's Law concerning malignancy (cancer), and to teach you the mechanics of invoking this Law that you might have a body free of the dread affliction.

I call unto Yāhweh, God, I AM that I am, to bless this publication – to send it forth to those who have the wisdom and need to use it. I trust that you, with God's help, will Damn malignancy (cancer) from all human beings and send it back unto Universal energy, its proper place in God's Kingdom.

I had cancer three years and seven months before it ever dawned on me. At the height of the cancer I had only three weeks and five days to live. If I had not discovered God's Laws concerning cancer and applied them very diligently, I would not be here to share this information with you.

There is a saying in our medical world, "He who treats himself has an idiot for a patient, and a fool for a physician," and this may be true, but I would rather heed the advice of Jesus, "Physician, Heal Thyself." The scriptures seem to have more truth and work better for me.

With few exceptions, by the time one discovers he has cancer, he has had it for a very long time. This was true in my own case. Now that I know all the true early signs of cancer, I also know that I was being warned a long time before my case became clinical.

From time to time I would notice that I would belch a little gas – I didn't give it much thought – just supposed that I had eaten a little too much. A few months later I began to pass gas – a little at first – but finally it became so bad that it became embarrassing to me and my family as well. My first warnings.

My hobby is Antique Automobiles. One trip we made to Colorado in our 1923 Cadillac, I noticed that at dusk I found it difficult to read the road signs. I had to be right up to them before they became legible. I still didn't have the good sense to even suspect cancer, and didn't give it much more thought until two months later when I was showing my slides and movies to the Antique Automobile Club. I couldn't seem to get the pictures to focus. I thought I had damaged my camera, but the club members said that the pictures were very clear and that I had better have my eyes checked.

Finally, I gave in and made an appointment with the Opthamologist for an eye examination. To my horror he prescribed bi-focals. My protests that 35 was too young for bi-focals were for nought, and I could see my pictures and road signs better. My second warning.

Things went on about the same for 3 or 4 months; when I began to notice that if I sat in one position for more than 20 minutes I would have muscle aches – particularly in the back. My physician, after several visits, finally gave me a muscle relaxant; and I was still too naive to suspect cancer. The medication didn't help much, and in another month or so I began to have pains in my chest. This, of course, scared me considerably, and I rushed to the physician once more.

Over the next few months several electrocardiograms were made and nothing out of the ordinary showed. It couldn't, because the pain was from the chest muscles – a wonderful sign of cancer – but, as usual, I was oblivious to the true early warning signs. My third warning went unheeded.

A long, long horrible period of mental depression followed. Another early true warning sign that cancer is rearing its ugly head. I even went to my physician and begged for help and asked for an antidepressant drug. By this time he was fed up with me, and he sat me down and carefully explained that there was nothing wrong with me. My heart was better than his; it was time for me to stop worrying about it; after all, it was only in my mind.

As cancer progresses it gives off a poison that makes one very depressed and there is a feeling of impending death most of the time. Gradually, during the entire three years of early cancer growth in my body, I became weaker and weaker. By this time I knew something very tragic was taking place, but I did not know what, and still did not have the good sense to even suspect cancer.

My job, the work I loved so very much, became distasteful. I wanted to give up – start a new profession – anything to try to regain an interest in life. After 14 years of college training for a job I loved to do, I was contemplating junking it all. After eight years of clinical practice and research, I found myself ready to throw in the towel. It is quite a terrible feeling to be so sick and not be able to understand why or put a name on it. My thinking became fuzzy, unclear, irrational. A fourth warning, and still no suspicion of the culprit!

During these several months of extreme depression, my hair began showing signs of lifelessness, becoming brittle and coarse. I was losing some and what was left was fast becoming grey. (Warning five also escaped my attention.)

Also, at this time I developed a hernia which is typical of those who have a long, slow malignant growth.

I was feeling so badly that I reluctantly returned to my physician. He admitted that there might be something wrong with me and sent me off to a specialist. After many tests and three months' time, he made the suggestion that I have my pancreas biopsyed. This was quite a shock to me, and it then dawned on me the true condition of my body.

Although I had been doing cancer research for several years, it never occurred to me that I could have the condition. Of course, only the cancer victim can understand the fear and despair that over-

whelmed me. This even hit me harder than the average, because I had been studying and researching the details of cancer and had a firsthand insight into the horror of horrors.

When I had felt so badly a year or so earlier I did add to my life insurance program a sizable sum, and felt that my wife and children could make it for a few years after I was gone. I felt so bad – knew so much – and had no hope at all.

By this time I had found a very reliable bio-chemical test for the early detection of cancer. I'll never know why I wasn't among the first to be tested. Probably I was afraid, since nothing could really be done.

As soon as I realized my true situation, I decided not to take any new patients and prayed that I had time to complete the work with the patients under my care. It took me about two weeks to overcome the shock and accept my fate, although I did not like it at all. Then I decided to run our bio-chemical test on my own family. The results were deeply shocking. My wife, two of my three children, and my mother had cancer, also.

I changed my mind and decided not to accept an early death as my fate, and accepted instead my fate of life and my duty to teach others God's Laws concerning cancer as they were revealed to me over the next few years as I applied these Laws to myself and those who asked my guidance.

The story of how all this developed would take days to relate, so I will only teach you the Laws and the mechanics of applying them. After all, this is all that is necessary. I don't have to know how many bolts are in my automobile to be able to drive it and apply the proper laws and principles.

Cancer, then, is nothing more than a simple deficiency disease. You cannot have cancer if an adequate amount of active pancreatic enzymes reaches the site of the malignancy. It is just that simple. The true early signs of cancer are the signs of inadequate protein metabolism.

True Early Signs of Cancer

1. Gas on stomach or bowel.
2. Sudden weakness of eyes.
3. Tired feeling most of the time.
4. Muscle weakness and cramps – first in back then in chest.
5. Extreme mental depression.
6. Sudden change in hair texture, color.
7. Development of various hernias (only in slow growing tumors).

CHAPTER II

CANCER IS A DEFICIENCY DISEASE

NO PERSON NEED EVER HAVE A CLINICALLY SIGNIFICANT CANCER – LET ALONE DIE FROM IT!

The organized medical profession is spending well over one million dollars each day in the United States alone, to find a "cure" for cancer, and has never seriously investigated the possibility that cancer could be a deficiency disease.

Actually, the presence of a malignant tumor in an individual indicates that he has a deficiency of active pancreatic enzymes. Because most people are familiar with diabetes, and because cancer is so similar, we use this analogy:

1. Diabetes is a disorder of carbohydrate metabolism due to inadequate production or utilization of insulin. Malignancy is a disorder of protein metabolism due to inadequate production or utilization of enzymes.
2. Insulin is produced in the pancreas. Enzymes are also produced in the pancreas.
3. Insulin production is controlled by a neurological process. Enzyme production is controlled by a neurological process.
4. Diabetes can be determined or verified by a simple urinalysis. Cancer can be determined or verified by a simple urinalysis.
5. The amount or severity of diabetes can be determined by an urinalysis. The amount or severity of cancer can be determined by an urinalysis.
6. Diabetes can often be controlled by diet alone. Cancer can often be controlled by diet alone. (See Chapters VI, VII, VIII.)
7. Diabetes can almost always be controlled by the proper dosage of insulin. Cancer can almost always be controlled by proper dosage of enzymes.
8. A diabetic can live a long useful life and never die as the result of diabetes. A cancer victim can live a long useful life and never die as the result of cancer.
9. A diabetic *must* control his diabetes the rest of his life by diet or medication or a combination of both. A cancer victim *must* control his cancer the rest of his life by diet and/or dietary supplements.

10. The diabetic and the cancer victim alike must seek professional help to determine and regulate the condition, but it is up to the individual to administer to himself the proper diet and missing medications and/or supplements.

Let us summarize by restating: MALIGNANCY INDICATES AN ACTIVE PANCREATIC ENZYME DEFICIENCY.

CHAPTER III

WHAT IS CANCER?

Cancer is a term used by the Medical Professions to classify both the fast growing malignant tumor, and the slow growing benign tumor.

Because we have not researched extensively the benign tumor, or rather because we offer no therapy for the benign tumor, we will exclude it from further consideration in this treatise.

We are, however, vitally interested in the fast growing malignant tumor which, if allowed to grow unchecked, will cause death. It is this type of growth which we refer to as cancer in this booklet and to which our therapy is applicable.

Today most clinicians have the mistaken belief that cancer is complex; a number of different diseases, each having its own cause. Nothing could be further from the truth. When one studies the history of a disease he finds a developmental pattern:

First, it appears to be many different diseases, depending upon which organ or part of the body is attacked. (Leukemia – cancer of liver, etc.)

Second, it seems to be caused by many different things.

Third, eventually someone discovers apparently the different diseases are in truth one disease.

Fourth, someone else figures out that since there is only one disease, there must be one cause.

Fifth, everyone thinks he has found the cause.

Sixth, there is a long period of trial and error where everything from snake oil to cobalt is "the cure."

Seventh, someone really finds the simple solution – usually on his own and independent of institutional or governmental grants and controls.

Eight, this individual spends the rest of his life, "Crying in the Wilderness," like a prophet trying to get organized medicine to freely take and use his ideas or cure. But, because it is so simple, organized medicine ignores him and refuses even to consider it until

Ninth, a promoter, usually a large drug company, sees a chance to make a large fortune.

Tenth, the drug company then runs a pseudo-study of 28 or 74 cases and announces a great discovery.

Eleventh, the drug company rushes many salesmen with free samples to the doctors' offices.

Twelfth, the doctor is a hero, the drug company is wealthy. Finally the remaining patients are cured, and everyone is happy.

Many are old enough to have watched this development of a "cure." Particularly, this has been true of tuberculosis, rickets, diabetes, polio, and the infectious diseases.

Most doctors, even the research scientists, suppose cancer is caused by such things as viruses, X-rays, smoking, chemicals, sunlight, trauma, etc. These, sometimes, are an indirect cause. The direct cause, according to our research, is the changing of an ectopic germ cell into an ectopic trophoblast cell. An excess of female sex hormones brings about this change. Both men and women have male and female sex hormones. When this delicate male-female sex hormone balance is upset, cancer may start.

Let us explain this a little further. In the human life cycle the male sperm unites with the female egg. Now if this fertilized egg would grow directly into a new baby, we would have no cancer or cancer problems; but nature does not act so simply and directly, for if she did, the newly formed embryo (baby) would fall out of the uterus. Therefore, nature had to develop some way to attach the new embryo to the wall of the uterus and some way to nourish (feed) it.

Actually, therefore, the fertilized egg gives rise to three basic kinds of cells: (1) Primitive germ cells. (2) Normal body or somatic cells. (3) Trophoblast cells.

The egg is fertilized by the sperm in the fallopian tube of the mother. By the third day this fertilized egg has fallen into the uterus. During the three days and for many days thereafter, the trophoblast cells (cancer cells) are growing very rapidly and surround the other two types of cells (primitive germ cells, and normal body or somatic cells).

This new baby will fall out of the uterus unless something happens fast, and happen it does. The trophoblast cells metastasize (as cancer does) to the wall of the uterus. Now the baby cannot fall out of the mother's uterus, but it needs nourishment. The trophoblast cells (cancer cells) continue to grow rapidly and form the placenta. Now with a good food supply and no danger of falling out of the mother, the baby (embryo) can continue to grow, safe and sound, until birth.

The placental trophoblastic tissue (cancer mass) continues to grow until about the seventh week when the baby's pancreas develops.

The baby's enzyme production along with the mother's enzyme production stops the growth of the placental trophoblastic tissue.

As the new embryo (baby) is being formed from the normal body or somatic cells, the primitive germ cells are multiplying. In a few days when the embryo (baby) develops to the proper stage, the primitive germ cells stop multiplying and begin to migrate to the gonads (ovaries or testes).

There are about three billion of these primitive germ cells that fatigue and never have the vital force necessary to reach the gonads. This means that there are two germ cells for every area the size of a pin head dispersed throughout your body. Any one of these germ cells is a potential cancer. This is why cancer can form in any part of the body. All that is needed is an imbalance of sex hormones and the embryonic destiny of these basic germ cells. The imbalance of sex hormones can take place at any time, but usually it occurs between 45 and 60 years of age.

When it is all said and done, cancer is a normal growth of tissue (placenta) due to the development of a basic germ cell in the wrong place (outside of the uterus). Sometimes this placenta also has a "baby" or benign tumor inside of it much like a normal pregnancy — only it is in the wrong place.

Malignancy, therefore, is never normal (somatic) tissue gone into wild proliferation, but a normal primitive germ cell growing normally in the wrong place.

CHAPTER IV

DO I HAVE CANCER?

"Do I have cancer?" Often doctors are reluctant to tell patients they have a malignant tumor. The shock is sometimes more than the patient can psychologically accept. Many patients act irrationally due to fear and hopelessness, built up by organized medicine.

With our present knowledge of malignancy, a cancer victim should rejoice at the early diagnosis, because no one need ever die from cancer.

How, then, do you obtain an early reliable diagnosis? Before we can answer this satisfactorily, we must look at the present chaotic state of accepted diagnosis.

CLINICAL JUDGEMENT

Clinical judgement is the most widely used method of cancer detection, especially since the public has become aware of "Cancer's Seven Danger Signs." People who call these signs to the attention of their physicians are a great help in preserving their own life.

"Cancer's Seven Danger Signs."

1. Any sore that does not heal.
2. Lump or thickening in breast or elsewhere.
3. Unusual bleeding or discharge.
4. Any change in a wart or mole.
5. Indigestion or difficulty in swallowing.
6. Hoarseness or cough.
7. Any change in normal bowel movement.

At the very best, clinical judgement is inadequate because by the time a tumor is clinically significant it is many months old.

BIOPSY

After the physician suspects a malignant growth he recommends that a Biopsy be taken and a pathological evaluation be made.

The advantages of the Biopsy are:

1. Type of malignancy may be determined.
2. If total tumor is removed for Biopsy it could be curative.
3. The location of the tumor may be indicated.

The disadvantages of the Biopsy are:

1. It is useless for screening purposes. (Quick-testing of large populations.)

2. Biopsy tells only the degree of the malignancy of the tissue being examined — but tells nothing of other tumors or other metastases in the body at the same time. Many times the physician will take a Biopsy of a breast and tell the patient she has a benign tumor — unknown to the doctor the patient has a fatal malignant tumor elsewhere in the body. Unfortunately both doctor and patient develop a false security.
3. Often when a Biopsy is made it is impossible to determine between a benign and a malignant tumor. In a case of this kind, radical surgery is recommended when there may be no need for surgery at all.
4. Often while making a Biopsy the malignant tumor is cut across which tends to spread or accelerate the growth. Needle Biopsies can accomplish the same tragic result.
5. By the time a Biopsy is evaluated it may be too late for treatment.
6. Biopsies cannot measure improvement or growth of tumors as treatment progresses.
7. After surgery it cannot tell if total cancer has been removed.
8. A Biopsy is not always feasible, and is always inconvenient.
9. A Biopsy cannot determine when a cancer reoccurs until it is very large.
10. A Biopsy cannot tell the total amount of malignant tumor present in the body.
11. A Biopsy employed carefully and in selected cases may do no harm; but if used indiscriminately, it may spread the disease and shorten life.

Under the very best of conditions the accepted methods of clinical judgement and Biopsy are inadequate. This is not specifically the fault of your doctor, for he is doing the best he knows. His education or knowledge is lacking in this area. When some "accepted" drug company or promoter tells him of our better method of cancer diagnosis, he will be the first to accept it, for he knows as well as you do that the entire cancer diagnosis/treatment system is ineffectual.

URINALYSIS

Over 25 years ago urine tests began to be developed which could easily and effectively determine the presence of malignant tumors. Many doctors used them not only in the United States, but in many countries throughout the world. These tests were never universally accepted because:

1. They were not under the control or manufacture of a major pharmaceutical company.
2. The doctors did not know how to properly use them.
3. They were too effective – 98% to 100% correct – which is very high for any laboratory test.

The most notable of these tests were: The Beard Biological Test for Malignancy;[1] The Beard Milk Assay Test; the Beard Anthrone Test; the Navarro Immunological Test; The Raffo Test; and the Sakai and Aron Tests.

These tests were so sensitive they could tell when a malignant tumor was two weeks old. Some tests were developed that could tell if cancer was present from the 2nd to the 14th day. This presented an insurmountable problem. Many people showed a positive test and the physician could not find clinical signs to verify it. The doctors then said the urine tests were worthless.

However, from 6 to 36 months later clinical symptoms would appear. Unfortunately the physicians had already taken their stand against the tests and would not admit their error. Biochemically, then, we can always determine the presence of a malignant tumor before clinical signs appear and many times several years before.

The disadvantages of the Urine Tests were:

1. Location of the malignancy is undetermined.
2. The type of malignancy is undetermined.
3. There is a false positive in pregnancy, some diseases of the liver, and when a patient is being treated with sex hormones.
4. There is a false negative in some diseases of the liver.

The advantages of the Urine Tests were:

1. Very early diagnosis – from 6 months to several years before clinical signs.
2. Measures the improvement or failure of improvement as treatment progresses. It can tell when and if a treatment being used is effective.
3. It is easy to collect the specimen.
4. It is safe and does not spread the disease.
5. If surgery is used any post operative cancer left is easily detected.
6. If malignancy reoccurs it is discovered early.
7. It eliminates any errors due to selection of the wrong tissue, as often occurs in a Biopsy.

1. Dr. Howard H. Beard, 5220 Locke Avenue, Ft. Worth, Texas

8. Cells or tissue are not needed for the test.
9. It is positive for malignant tumors and the benign tumors cannot be mistaken for malignant.
10. It measures the total amount of malignant tissue present in the body.
11. Tests are almost 100% accurate.
12. Eliminates the fear of surgery and the possible error of Biopsy.

KELLEY PROTEIN METABOLISM EVALUATION JNDEX

Although the Urine Tests were biologically perfect and the most significant development in the last 50 years of cancer research, they were clinically misinterpreted and mis-evaluated.

As we researched the subject it became obvious that there was a great need for a clinically useful and significant urinalysis. It was with this end in view that we developed the Protein Metabolism Evaluation Index. This is clinically desirable, and is based on the premise that cancer is a foreign protein. The evaluation indicates kidney function, liver function, pancreatic function, presence of foreign protein, and the amount of foreign protein.

This test can indicate when there is the presence of foreign protein only two weeks old. Every person should have an evaluation every six months. By doing this, a malignancy could not be over six months of age before being detected. This is early cancer detection, and gives the clinician plenty of time to successfully guide the treatment.

We do not claim the protein metabolism evaluation index to be 100% accurate – we do not know of any test that is. We hope it will be widely used for the detection and treatment procedures of malignancy. It will be a wonderful day when this index is universally accepted and used. This is the first step in eliminating the cancer problem.

KELLEY MALIGNANCY INDEX

The most accurate and extensive cancer detection system ever developed is THE KELLEY MALIGNANCY INDEX. This evaluation determines the presence or absence of cancer, the size and growth rate of the tumor, the location of the tumor mass, prognosis of the treatment, age of the tumor, and the regulation of medication for treatment. We prefer to use this system of evaluation and find it far superior to any other method of detection.[1]

1. The Kelley Research Foundation, P.O. Box 89, Grapevine, Texas 76051.

CHAPTER V

ECOLOGICAL THERAPY

The person who has the disease should be treated, not the disease that has the person. We call our system of cancer therapy *Ecological* because the total person and his total environment must be considered in order to give proper treatment. The patient's entire way of life must be changed.

We advise a very comprehensive program. It is extremely effective and rather inexpensive. Those who are willing to faithfully and tediously follow it will be successful. Those who follow it in part or haphazardly will be completely unsuccessful.

Our program is based on the best scientific knowledge available and has been condensed to a simple well balanced system. Ecological Therapy can be compared to a fine watch: each part must be there and be working properly or it does not work at all. Each step of the Ecological treatment must be followed exactly or there will not be any relief of the symptoms.

We have found that halting or stopping the malignant growth is relatively simple. The clinical problem in treating a cancer victim is clearing the body of accumulated toxins. The growth is usually stopped from within 3 hours to 12 days of Ecological treatment, depending upon the amount and method of administration. This is usually noted by a sharp elevation of body temperature lasting about 3 days. Then comes the long laborious period of detoxication. This takes from 3 weeks to 12 months, depending upon the location and mass (amount) of growth. Many cancer victims have had their tumors successfully treated only to die of toxic poisons as the mass is dissolved and excreted from the body: the clinician treated the disease and not the patient, or failed to treat Ecologically.

The prognosis for a cancer victim is very good when the liver, kidney, and lung functions are at least 50% of normal, and an optimistic spiritual attitude is maintained. Unfortunately, we have found many people who have lost hope, or their next of kin have lost hope, to the degree they were resigned to death and refused to try our system of therapy.

We find that the rate of recovery is subject to another law — that of blood supply. If the rate of blood supply to an area is great, recovery is fast. If the blood supply to an area is inadequate, recovery

is very slow. Thus, we find those with leukemia respond quickly, while those with bone afflictions have a much slower response. We have also noted that in tumors of large diameter (three or more inches) the outside diameter is quickly dissolved, but the interior, where there is a lack of blood supply, often takes several months to dissolve. This is a very wonderful thing: the body has time to detoxify and the death rate from toxemia is greatly reduced.

Basically the Ecological treatment involves five essential steps. Each step will be discussed in the following sections.

1. Supplemental nutritional therapy.
2. Detoxification of the body.
3. Adequate, proper, well balanced diet.
4. Neurological stimulation.
5. Spiritual attitude.

CHAPTER VI

SUPPLEMENTAL NUTRITIONAL THERAPY

Cancer is basically a deficiency disease – a deficiency of the pancreatic enzymes. This is a deficiency of the free active enzymes in tissues of the body. There are at least six reasons why enough enzymes are not available to digest the cancer:

1. The pancreas fails to produce an adequate quantity of enzymes.
2. We take into our bodies such large quantities of foods that requite pancreatic enzymes for their digestion that there are none available for the cancer digestion.
3. We may produce enough enzymes, but we fail to take into our diet enough co-enzymes (vitamins) to make the enzymes work.
4. Our bodies produce anti-enzyme factors. These factors keep the enzymes from digesting our own bodies. Sometimes we produce an over-abundant supply of these anti-enzyme factors.
5. Often we produce enough enzymes, but the blood supply to a cancer area is so poor the enzymes we produce are not carried to the area.
6. We may fail to take into our diet enough minerals which are essential to release the enzymes into activity.

The essential thing, then, in treating a cancer patient, is to get the enzyme to the cancer area. We must have enough enzymes there to stop the growth, but not so much that the cancer will dissolve too rapidly and overload the body with toxic poisons.

The Kelley Research Foundation has gathered or compounded seven nutritional supplements which we have found to be essential and effective for successful cancer treatment.

The time element is far more important than you can possibly realize. The supplements should be taken when the body is in the proper alkaline/acid balance. The times indicated are for the vast majority of cancer victims. Unless your individual tests show otherwise, you should make every effort to take the supplements at the exact times indicated.

1. NUTRITIONAL SUPPLEMENT —— A perfectly balanced co-enzyme – vitamin – mineral compound. Lack of the co-enzyme is one of the major causes of enzyme failure.
2. NUTRITIONAL SUPPLEMENT —— a very effective digestant. Most cancer victims have difficulty in digesting and properly

assimilating food. With the Kelley Almond Diet (Chapter VIII) this supplement is essential. The diet is very limiting and as much of the food as possible should be assimilated (taken after meals).

3. NUTRITIONAL SUPPLEMENT —— a concentrated vitamin formula of C, Bioflavonoids and rutin (to be taken every 3 hours while awake). It has been found that most cancer victims have a severe vitamin C deficiency, up to 4500 mg per day.
4. NUTRITIONAL SUPPLEMENT —— a balanced compound of natural organic minerals and trace minerals. This seems to stimulate the liver and act as a general metabolism activator of the enzymes on the individual cell level.
5. NUTRITIONAL SUPPLEMENT —— almonds. We use this to replace meat (Chapter VIII). Almonds are a very excellent quality protein. They should be taken as directed only, no more and no less, and at the exact time specified only.
6. NUTRITIONAL SUPPLEMENT —— A balanced amino acid – lipoid substance. Since cancer is often caused by an excessive intake of protein, this compound is essential to the Kelley Almond Diet in order to maintain proper amino acid content for cell and tissue building and repair.
7. NUTRITIONAL SUPPLEMENT —— A specially formulated concentrated pancreatic enzyme combination. This is the substance that is most often missing in the body of cancer cases. It is absolutely essential to stop the malignant growth and digest the tumor. (Taken at 3:30 AM and 2:30 PM).

All seven nutritional supplements must be taken until the protein metabolism urinalysis index or The Kelley Malignancy Index report drops to 0 K units. When this occurs the patient may discontinue all supplements except 1, 2 & 4. It is essential that supplements be taken as long as the index is positive. This is similar to taking insulin as long as the urine sugar is positive in diabetes.

It cannot be emphasized too strongly that after any malignancy is successfully treated and health restored, there must be an Index Test every six months.

Cancer is a deficiency disease – and just because you have a negative test once or even overcome one tumor, – it is no guarantee that you will not have another tumor. Proper balance must be maintained.

A person who has had cancer will always be susceptible and must keep constant vigilance. If at any time the free active pancreatic en-

zymes in the body fall below the amount that is necessary to keep the cancer cells digested, malignancy will always redevelop. Many people make the false assumption that just because their first protein metabolism evaluation test is negative they are free from cancer for life. This mistaken attitude has shortened the life of many.

Have YOUR Index Test every six months – and be sure.

CHAPTER VII

BODY DETOXICATION

In reality a person very rarely dies directly of cancer. As the malignant tumor grows it gives off waste products which must be eliminated through the colon, liver, kidneys, lungs, and skin. These waste products accumulate and gradually overburden the body. Most persons, then, die of toxemia.

We recommend that the patient give serious consideration to the detoxication process even before he starts the nutritional supplements mentioned in Chapter VI. It is absolutely imperative that he carefully follow the detoxication process after he starts destroying the cancer tissue with the supplements.

Before any disease can be cured the waste products and impurities must be cleansed from the body. The sooner this is accomplished the quicker the body can repair. This is particularly true of cancer and the following steps must be taken.

I. CLEANING THE COLON

A. *Purging* – Immediately upon rising take one tablespoonful of Epsom salts dissolved in a half glass of water. In thirty minutes repeat this. Repeat again in thirty minutes. (Three doses.)
The following alkalizing punch may be taken after two hours as you become hungry. One glass every hour, if desired.
Alkalizing Punch: Juice of 6 fresh lemons
12 oranges
6 grapefruit
place in gallon glass jar and fill with distilled water.
An orange or grapefruit may be eaten in the evening. The purge must be repeated for two additional days, or a total of three days.

During the purge the body may undergo some rather uncomfortable sensations such as nausea, headaches, cramps, and dizziness. This is a result of the cleansing. Poisons that have accumulated for years are suddenly dumped and this is quite a shock for the system. These sensations are temporary and will disappear when the poisons are finally removed from the body. Purging must be repeated every thirty days (once a month) for a year.

B. *Fasting* — After three days of purging a fast must be started. The fast should also last three days. We are now giving the body a rest and an opportunity to cleanse itself of much waste on the individual cell level. Some discomfort may also be experienced during the fast. Each day of the fast one quart of fresh carrot juice and one pint of celery juice should be taken, along with all the distilled water desired. It is best to dilute the fresh juice with equal parts distilled water.

It is important to remember that unless sufficient fluids are taken the poisons become concentrated and are not eliminated in the natural way.

C. *Enemas and Colonic Irrigations* — Starting the same day as the fast, a high enema should be given. Upon rising each morning, make a pot of coffee (1 quart). Allow it to come to room temperature. Use it for the morning enema. A coffee enema should be given every morning for one month; then twice a week for eight months. The coffee enema is very stimulating to the liver and is the greatest aid in eliminating its toxic poisons.

Each evening for the first two weeks a bacteria enema should be taken at bedtime. It is best to use yogurt, sour milk, or buttermilk (in order of preference). This should be diluted with distilled water until it will flow easily. Use about 1 quart of solution. (The bacteria enema should be repeated every time of purging or when antibiotics are taken.)

After this two-week period an evening enema should be given twice a week for one year. One quart of warm water with the juice of one lemon.

If colonic irrigations are available they should be given once a week for the first three months and occasionally after that depending upon the severity of the cancer condition. The advice of the doctor giving the colonic irrigation should be followed. In cases of extreme toxicity, a colonic irrigation with oxygen is essential. It should be given before the bacteria enemas.

The proper cleaning of the colon will do most to help the liver. This, along with the nutritional supplement, Lecithin, and proper diet should help attain good liver function. (One tablespoon of granular soy Lecithin should be taken three times a day — with meals for 1 year.)

II. CLEANING THE KIDNEYS

The kidneys filter approximately 4,000 quarts of blood daily. The wastes, largely urea, are eliminated and the acid/alkaline balance

is maintained. Plenty of liquids should be taken daily. The pharmaceutical diuretics may be taken, but natural diuretics are more desirable. There are many, but the one that works well for us is the juice of one lemon in a cup of hot water twice a day, mid-morning and mid-afternoon. This should be taken for several months, especially during the winter. In kidney disease the protein intake should be limited and extra vitamins and minerals taken (Supplement A).

III. CLEANING THE LUNGS

Life is dependent upon the adequate exchanges of gases in the lungs. The most significant is the removal of carbonic acid and the flow of oxygen into the blood. Many other impurities are given off by the lungs. Diet is very important, and the mucous forming foods should be avoided.

One thing that many people overlook is that of irrigating the nose each morning. This is best accomplished by sniffing water into the nose and then blowing it out. This should be repeated several times. Once the nose is cleansed, deep breathing should be started. For about 12 minutes each day one should breathe as deeply as possible in the fresh air.

IV. CLEANING THE SKIN

Many people overlook the skin as an organ and do not think of it as an organ of detoxication. Because of the great amount of accumulated poisons in the cancer victim, and the overload on the other systems, the skin must be used for detoxication. As this is utilized, all manner of eruptions, odors, colors, and blemishes will appear on the skin. These conditions will disappear as the body becomes purified.

We have found it best to take a hot shower each morning, using plenty of soap. The hair must be shampooed frequently. After the shower sit in a tub of water with one cup of apple cider vinegar added. This helps alkaline/acid balance. Then the skin should be rubbed briskly with a towel until a warm glow is felt.

Every fourth night the cancer victim should be rubbed from head to toe with a mixture of olive oil and castor oil in equal parts. Then a hot soaking bath for 15 minutes to allow the oil to penetrate. This is followed by going to bed under heavy covers for about one hour to sweat the poisons out. Then a cleansing shower is taken. This may be discontinued after three months.

V. EXERCISING

In almost every case of cancer, particularly those cases of long standing, the protein from the muscles has been used to maintain life. In other words protein metabolism has been so poor that the body had to take protein from the muscles and, to a very great degree, the muscles are destroyed.

After the cancer is destroyed, the muscles begin to rebuild. This takes approximately three years. If the muscles are exercised strenuously during this time hernias may develop. For this reason we have found it best to replace strenuous exercise with a brisk walk at least once a day for the three years following cancer therapy.

CHAPTER VIII

ALMOND DIET

About the year 424 B.C. Hippocrates, the father of modern medicine, made the statement, "Your food shall be your medicine and your medicine shall be your food." Try as we may, we have not been able to improve upon this basic truth. This is particularly true when it comes to the successful treatment of the cancer patient. At least 86% of all cancer conditions could be adequately treated and/or prevented by diet alone.

It never ceases to amaze one at the number of learned as well as ignorant persons who scoff when diet is mentioned. They all seem to believe that no matter what is placed into the body, by some magical process, it makes for perfect health. Yet these same people are very fastidious and concerned about what, how, and how much food is fed to their pedigreed dogs and cats, their registered cattle and horses. It is ironical that they cannot see that their own health is dependent upon a proper balanced nutritional process.

PROTEIN

We have maintained throughout this treatise that cancer is nothing more than a pancreatic enzyme deficiency. The greatest cause of this deficiency is the amount of second hand protein fed into the body. The pancreas just simply cannot manufacture enough enzymes to digest the large volumes of milk, cheese, meat, and peanuts we eat and have any enzymes left over to digest the foreign protein we know as cancer. *If people would not eat protein after 1:00 p.m., 83% of cancer in the United States could be eliminated.*

MEAT

The cancer victim will want to give up meat immediately, as it is the most harmful of all foods, and the very same enzymes which digest the foreign cancer cells are used to digest meat. All the natural self-made enzymes you can produce should be used to fight the cancer. Meat should be avoided for another reason, it has a high female sex hormone content. For commercial reasons most animals, especially beef and fowl, produced in the United States today have been fed large quantities of hormones. Since the female sex hormone is the

only starter or initiator of cancer, meat of this type should be excluded from the cancer patient's diet. When the protein metabolism urinalysis index or the Kelley Malignancy Index falls below 50 K units, meat may be used in the diet again.

MILK

The cancer victim will also want to give up milk in every form forever, except for yogurt or buttermilk. Milk, like meat, has too high a second hand protein content and requires too much of the pancreatic enzymes for digestion. An animal cannot produce milk unless the female sex hormones are unbalanced; this causes too many hormones in milk for the person who has cancer. It is advisable to take 4 ozs. of unpasteurized yogurt each morning for breakfast. This will supply the intestines with adequate helpful bacteria.

PEANUTS

The cancer victim will also want to give up peanuts. First, the peanut is not a nut, but a legume. Second, the peanut also has too much protein for the cancer patient. Third, it has recently been found that a fungus grows on peanuts which produces atlatoxin. Atlatoxin is used by cancer researchers to stimulate cancers in experimental animals.

PROTEIN TIMING

It is not only imperative that the correct kind and quantity of protein be given, but, of equal importance, it must be taken at a specific time. We have found that regular proteins should be taken at breakfast and lunch only. When this is strictly observed the pancreatic enzymes, used in digestion of protein, are used only about 6 hours. This leaves 18 hours for production of pancreatic enzymes to digest cancer tissue. If the average cancer patient is carefully observed, it will be noted he starts the day with protein (usually milk), then on and off all day eats nuts, has a large steak for dinner and finally a glass of milk, and/or a dish of ice cream at bedtime. It is almost impossible for the pancreas to produce enough enzymes under these conditions.

KELLEY ALMOND DIET

We call our diet the almond diet because the principal protein is almond and vegetable protein. The cancer victim should never give up all protein, as he might be tempted to when he first learns this principle. The pancreatic enzymes themselves are protein (amino acids), and unless the body is fed adequate protein, the pancreatic enzyme production will stop and the cancer tissue will make a very rapid growth. This total withdrawal from protein has been the fallacy of many cancer diets, such as the "Grape Cure." This is also the reason these diets have worked so well for the first few months – no protein – thus freeing the pancreatic enzymes to digest the cancer. Yet, over prolonged periods of total abstinence from protein the pancreas fails. Proper balance and regulated intake is the answer.

Raw almonds are a very good source of protein and should be used as directed: 10 almonds at breakfast and 10 almonds at lunch. This much and no more, only at the time indicated. Along with the remainder of the diet this amount will give adequate, but not excessive, protein.

Should you have difficulty chewing whole raw almonds, you may substitute two tablespoons of pure raw almond butter.[1]

VEGETABLE JUICES

The second most important phase of our cancer diet is that of raw fresh vegetable juices. At least one quart of carrot and one pint of celery juice must be taken each day. As much other fresh raw vegetable juice in volume may be taken as desired. One should consider alfalfa, beet, cabbage, cucumber, dandelion, endive, lettuce, parsley, potato, spinach, and turnip juice. Vegetable juices are the builders of the body. Juice is better than the whole vegetable because so much energy is used to digest the whole vegetable. Juice has a proper balance of vitamins and minerals in a concentrated solution. We recommend that the juice be made fresh at it is used. We use the Norwalk Juicer, the Acme Juicer, or the Champion Juicer, all of which are very efficient in juicing the vegetables.[2]

1. Hain Natural Raw Almond Butter, Hain Pure Food Company, Inc., Los Angeles, California; Hunza Natural Raw Almond Butter, Nutrifoods Company, P.O. Box 771, Sun Valley, California.

2. Norwalk Juicer: Norwalk Mfg. Co., P.O. Box N, St. George, Utah, 84770; Acme Juicer: Acme Mfg. Co., 10th and Leather, Lemoyne, Pa., 17043; Champion Juicer: Plastaket Mfg. Co., Lodi, California.

FRUIT AND FRUIT JUICES

Fresh raw fruit and fruit juices are the cleansers of the body. The cancer victim may eat as much as desired of the fresh raw fruit or the fresh fruit juices, so long as he takes the required amount of almonds, carrot and celery juice. Dried unsulfered fruit may also be taken.

FRESH RAW SALADS

The cancer victim may eat, in addition to his almonds, juice, and fruit, all the fresh raw salad he can hold. This is good for lunch or dinner meals. The body needs bulk and it is not necessary or desirable to live on juices alone. Raw salads are necessary to keep the digestive tract in good working order. A must for every cancer patient is Dr. N. W. Walker's book, *Diet and Salad Suggestions.*[1]

GOLDEN RULE OF CANCER DIET

The Golden Rule of Cancer Diet is TAKE NOTHING INTO THE BODY THAT HAS BEEN COOKED OR PROCESSED.

The juicer is the most important appliance in the kitchen of a cancer victim. If necessary sell the stove and buy a good juicer.

The enzymes in foods that have been cooked have been destroyed or changed into a different compound (amino acid). Cooked food can only be used as food and not as enzymes, for it has no life. For example, if you plant a raw potato it will grow. If you boil a potato and plant it, it will not grow, it will only rot. Most enzymes are destroyed at 107°F and all are destroyed at 140°F.

When a person eats anything processed he is not only eating "dead food," (those in which the enzymes have been destroyed), but he is adding a second very destructive force to his body, the destructive force of food preservatives. This may not be too significant for a normal healthy person, but for the cancer victim it may mean life or death. The liver must detoxify, destroy, or metabolize all foreign substances from the body. When one eats foods with preservatives, it adds an extra burden upon the liver which the cancer patient cannot accept.

1. *Diet and Salad Suggestions* and *Raw Vegetable Juices, What's Missing in Your Body?* by Dr. N. W. Walker. The Norwalk Press, P.O. Box 13206, Phoenix, Arizona 85002.

WHOLE GRAIN CEREAL

We have found that it is desirable in building the body to eat a mixture of raw whole grain cereals for breakfast each morning.[1]

Mix together well in a large container one pound of each of the following grains and nuts: wheat berries, buckwheat, rye, barley, oat groats, millet, sesame, brown rice, flax, corn (or popcorn), alfalfa, lentils, mung beans, and almonds. Store in refrigerator. Each night take three or four tablespoons of this mixture and grind it well in a seed mill,[2] and then just cover with cream or water. Allow to stand at room temperature overnight. In the morning add fruit and/or honey or black cherry concentrate[3] to your taste. This is to be eaten raw, not cooked, and should be continued for at least two years.

CONCENTRATED FOODS

White Flour — All concentrated foods are extremely hard on the liver and should be given up. White flour and all products containing white flour should be avoided. These not only are concentrated carbohydrates, but almost always have preservatives added.

Use fresh whole wheat bread, made from wheat grown free of all pesticides (another liver destroying chemical). We have found Arrowhead Mills[4] a reliable source for this wheat. Wheat should be ground fresh as needed, using a Lee Flour Mill.[5] The essential vitamins are oxidized within three days at room temperature; hence the need for grinding only as used. Freshly ground flour or freshly made whole wheat bread may be safely stored in a deep freeze for about a week. It is best, however, to use it within three days.

White Sugar — The cancer victim will also want to give up all white sugar and white sugar products. The concentrated carbohydrates are hard on the liver, but more important in relation to cancer, they are very hard on the pancreas. The pancreas, as noted earlier, is the first organ to be protected at all costs. White sugar has

1. Cereal Grains: The El Molina Mills, Alhambra, California.
2. Seed Mills: Coronation Seed Mill Grinder, Universal Distributors, 3838 Clarington Ave., Culver City, California, 90230. Miracle Mill, Miracle Juicers, Inc., 16 West 40 Street, New York, N.Y., 10018.
3. Nu Life Black Cherry Concentrate: Gides, Inc., Long Beach, California, 90813.
4. Arrowhead Mills, Hereford, Texas.
5. Lee Flour Mill: Lee Engineering Co., 2023 Wisconsin Ave., Milwaukee, Wis., 53201.

been processed (refined) and all the vital minerals are taken out. Cancer victims are always deficient in minerals.

For those who have a sweet tooth, these foods may be eaten as desired: dates, date sugar, figs, and raisins. Organically grown dates, date sugar, figs and raisins may be obtained from Mr. Lee Anderson's Covalda Date Co.[1] These are free of toxic pesticides and are not harmful to the pancreas or the liver. A cancer victim may also eat black strap molasses, pure maple syrup, or unpasteurized honey, in that order. The first two are preferable because they have a high mineral content.

Soy Products — Soy products, except Lecithin, should be used very sparingly for two reasons: first, the protein content is too high for the cancer victim; second, the soy products tend to upset the delicate acid/alkaline balance of the body. Eating soy products may be resumed when the protein metabolism urinalysis index or the KMI is below 50 K units.

Other Improper Foods — Lemon juice should replace vinegar altogether. Vinegar is too harsh on the delicate mucous membrane of the alimentary canal.

For the period of intensive detoxification and treatment, tea, coffee, soft drinks, chocolate, liquor, tobacco, pork, and white rice should be avoided. These also place additional stress upon the liver and pancreas as they are being detoxified.

1. P.O. Box 908, Coachella, California 92236.

CHAPTER IX

NEUROLOGICAL STIMULATION

While the body is being properly detoxified and nourished, the nerve supply to the pancreas and liver should be considered.

A specific organ works only when a nerve, chemical, or pressure stimulation tells it to. Upon taking careful histories, we found a number of cancer victims who had had blows to the head or spine. We feel that such experiences change the nerve impulses to the various organs. If pressure on a nerve to the pancreas causes it to cease sending impulses to the pancreas, the pancreas will turn off and wait until the nerve tells it to work again. If the nerve is destroyed or for some reason never sends a message, the pancreatic function will be greatly impaired.

Probably the best way to reactivate the nerve enervation is through some form of manipulative therapy such as osteopathic manipulation, chiropractic adjustments, or physiotherapy. We have found it advisable to have a weekly manipulative treatment for at least the first nine months of cancer treatment.

Neurological stimulation can sometimes be increased or simulated by chemotherapy, but this technique must be performed under the direction of a very highly skilled clinician.

There is a group of dentists who use a new method called Mandibular Equilibration to re-shape the skull, take stresses from the brain, and in this way effect very profound neurological changes.[1]

1. Dr. W. B. May, 7131 Prospect Place, N.E., Albuquerque, New Mexico, 87110.

CHAPTER X

SPIRITUAL ATTITUDE

If your cancer has caused you to stop, think, pray, and know God better, it has been a blessing to you.

If your cancer has caused you to realize the importance and magnificence of this temple wherein your soul dwells, you have been doubly blessed.

If your cancer has caused you to look within and ask the Christ to dwell within you, you have been thrice blessed.

Often physical infirmities come to us for such a purpose. This was true in my own case. The still, small voice within spoke out to guide and teach this Child of God.

Not all who have cancer will overcome the condition. Many will not believe that such a simple treatment will work. Many will not have the opportunity to hear about and try the procedure. Many will come too late with a temple (body) too weak to respond. But, I pray with all of you my friends, that you will learn a beautiful lesson and learn it well. I did.

There are four young children in my home. God has many millions in His Kingdom.

Each morning (by car) I take my children to their school (elementary). Each morning (by birth) God takes his children to their school (earth). Each evening (by school bus) my children come home. Each evening (by death) God brings His children home (Heaven).

Each evening and night I enjoy and have fun with my children. They rest and learn of love and the many things I have come to teach them. Each evening God enjoys His children. They rest and learn of love and the many things The Father has to teach them.

The next morning I dress my children in a new dress and take them to school again. The next morning God dresses his children in a new body and takes them to school (earth) again.

Occasionally, I want my children to go with me for a special treat, so I take them out of school early. Sometimes God wants his children to go with him for a special treat, so he takes them out of school early. Often this seems very unfair, but it doesn't really matter—we return them to school the next day, more enriched than before.

Sometimes my children have difficult lessons to learn. Sometimes God's children have difficult lessons to learn.

Sometimes my children fail to learn their lesson. I make them repeat it. Sometimes God's children fail to learn their lesson. God makes them repeat it. This is for their own good.

When my children are in the sixth grade they have forgotten the steps in learning to read, but they remember the principle very well. When God's children are in this embodiment (lifetime) they do not remember their earlier embodiments (lifetimes), but they remember the principles that God would have them know — love, faith, hope, service, etc.

Each of my children is in a different grade in school: each doing the best she can. I will not allow any one to criticise or condemn another. They are encouraged to be kind and loving to one another.

Each of God's children is in an experience in their school (earth): each doing the very best he can. Jesus said, "Judge not, that ye be not judged" (7 Matthew 1); "This is my commandment, That ye love one another, as I have loved you." (15 St. John 12.)

Some day my children will learn all the lessons of their school and they will go on to have homes of their own. Some day God's children will have learned all the lessons in their school (some sooner than others) and will go on to rule with Christ.

Yes, I believe in incarnation and re-embodiment. Is it not God's plan? Is it not taught in the Holy Scriptures?[1]

If your cancer has taught you spiritual truths, you have gained much. I pray with you and for you that at this point you have come to the realization that your spiritual decision to get well or not to get well is your own responsibility. If you decide to go home early, rejoice, for the Father prepares a place for you. Those of you who have loved ones who have made this decision, rejoice with them and send them on their way into God's care.

If you decide to stay in school a little longer, this is also good and it should now be easier. If you are to operate as a perfect being, in perfect health, then you must have a perfect attitude. You must become aware of the spiritual power within that is greater than yourself — the still small voice within.

If you are one of the many millions of people who have been told that you have cancer and that your days are numbered, then it is you who must be interested enough to seek out the truth of your condi-

1. *Many Mansions* and *The World Within* by Gina Germinara, Wm. Sloane Associates, N.Y., and, *Many Lifetimes* by Kelsey and Grant, Doubleday Co. Inc., Garden City, N.Y.

tion. You have read many things in this treatise which bring new thinking to a very old disease.

Since we are dealing with the Ecological approach to cancer, we must consider not only the physical, but also the mental and spiritual laws of God. We need help from those around us as well as from the Godpower within to reverse our thinking, and attain that balance which creates a healthy physical being.

As stated in previous chapters, half measures will avail you nothing. You are at the point where you must ask God for guidance. These are the steps which are suggested as a method of spiritual recovery:

1. Accept the fact that you are afflicted with a symptom (malignant cancer) and that recovery is possible.
2. Establish a faith in a power greater than yourself and know that with His help you can regain health and harmony.
3. Make the decision to turn your will and your life over to the care of God.
4. Conduct a complete self-analysis to better understand your own emotions.
5. Admit to God, to yourself, and to others the exact nature of what you find to be your shortcomings.
6. Be willing to give up what you are doing wrong.
7. Seek through prayer and meditation to improve your conscious contact with God. Pray only for knowledge of His will for you and the strength to carry that out.

Having had a spiritual awakening as a result of this action, practice these principles in your every thought.

Just as the body must be purged and cleansed, so must the emotions and spirit be purified. This is a comparatively simple task to accomplish, but do not lull yourself into believing that it is an easy task. Rigorous self discipline and the ability to grasp and develop a manner of living with complete honesty in all of your actions and thoughts are necessary.

You must become strong willed to be a winner in accomplishing that which you set out to do for yourself. You will look for all the good in everything and refuse to accept any negation.

CHAPTER XI

CONCLUSION

First, one should make every effort to include his physician in his cancer treatment program, or find a physician sympathetic toward this new-found information. The physician has many patients who suffer needlessly, and you may help others who are similarly afflicted. If such a physician is not available, remember the first law of life is self preservation, and in the long run each individual is responsible for his own health.

Cancer is basically nothing more than a type of placenta growing at the wrong place and time in the body, due to the lack of free, active pancreatic enzymes. The lack of free pancreatic enzymes can be caused by failure of the pancreas to produce, over production of anti-pancreatic enzyme factors, or the failure to include adequate co-enzymes and minerals in the diet, or the excessive intake of protein in the diet. This last is probably the most significant cause.

The successful treatment of cancer involves two basic principles: stop the growth of the tumor; dissolve the tumor at such a rate that death from toxemia will not result.

This treatment is accomplished by:

1. Understanding what cancer is, taking a positive spiritual attitude of optimism toward it.
2. Determining positively if cancer is present.
3. Taking sufficient nutritional supplements.
4. Proper detoxication of the body.
5. Maintaining an adequate, proper, well balanced diet.
6. Providing proper neurological stimulation.

CHAPTER XII

THE RISE OF THE CANCER

scar so much as I was to have cut. My intestines were so badly with cancer that I was in constant pain. I will have the scars for a long time to come.

THE ROAD TO RECOVERY

When I finally worked out the total therapy program, I thought everything would be wonderful and I would recover without any difficulties. But I had still another lesson to learn. Recovery can be worse than the disease itself. I not only had to destroy the cancer but had to rebuild a badly shattered body.

As the cancer is absorbed by the body, it overloads the blood and liver with toxic poisons, making you feel "goopy" sick. This, for me, lasted about eight months after the cancer growth was stopped. All the while the mental depression remains and the diet leaves much to be desired. You have been accustomed to all the tasty "junk" and it is very hard to give it up forever.

As you begin to get over the "goopy" sick feeling, you will notice you have a good day when you feel wonderful, then several bad days when you feel "goopy" sick again. You enjoy the good days so much the bad ones seem much worse than they really are. Now you can realize how very sick you have been.

About the time you are having a few more good days than bad, you start having muscle cramps, very bad ones. This condition goes on for about nine months while you are rebuilding the muscle protein which was taken out of the tissue during the early stages of the cancer. This stage is similar to the growing pains you experienced as a teen-ager.

There is a pot of gold at the end of the rainbow - your good health. If all of the steps have been faithfully carried out your body is in better condition than you have ever been in before. You will be tempted many times to go back to your old ways, and many do, but good health is such a wonderful thing you should not yield to these temptations. I trust you have learned your lessons well.

AN OUNCE OF PREVENTION

Many people, especially smokers, have asked me, "What can I do to keep from having cancer?" Eighty-eight per cent of the times it can be prevented by three simple rules.

1. Eat no meat, milk, or peanuts after 1:00 p.m. and follow the diet outlined in Chapter VIII.
2. Take 4 nutritional supplement 7 tablets every day at 3:30 p.m.
3. Take 1 tablespoon of blackstrap molasses with the evening meal.

Twelve percent of cancer in the United States in 1968 is of a functional disorder and would require careful clinical study and treatment procedures.

SUPPLEMENT A

TABLE A

CAUSE OF MALIGNANCY*
In the United States in 1968

DIETARY	83%	Intake of too much protein
INJURY	10%	Blows to the head, ill-fitting dentures, whiplash, twisted spines, chemicals or other elements that turn off the pancreas.
Cranial	(4%)	
Dental	(3%)	
Spinal	(1.9%)	
Other	(1.1%)	
MALFUNCTION	7%	Lack of minerals or vitamins or their proper utilization; emotional stress; obstructed pancreatic duct; etc.

*Three principles are involved here:
1. Overworking the pancreas.
2. Turning off the pancreas.
3. Not utilizing the pancreatic enzymes.

A NEW CONCEPT OF CANCER*

I would like to share with you a concept of physiology and ecology in cancer. In order for you to comprehend my concept of cancer – let me give you a little background by reviewing with you Pellagra and Diabetes. For years, patients were placed in insane asylums because they had the simple deficiency disease called Pellagra. Even as far back as 1916 Dr. Joseph Goldberger found that diet could prevent this condition, but it was not until the 1940's that it was discovered that Pellagra was nothing more than a simple vitamin B deficiency. Now, no knowedgeable physician would commit such a patient – but rather give him the B vitamins.

But what is Pellagra? It is just a symptom of a general systemic condition. For centuries only the symptoms were treated – now we know better.

Let us go to diabetes. What is diabetes? It is nothing more than a symptom. A symptom that tells us that our systemic carbohydrate (or sugar) metabolism is not functioning properly. Before insulin the great physicians wrung their hands and stood helpless.

What is CANCER then? It is nothing more than a symptom of a systemic condition. It is a symptom of inadequate and deficient protein metabolism. The real problem is PROTEIN METABOLISM – not cancer. Cancer is only a symptom telling those who would listen that their protein metabolism is in very serious trouble.

Let us not be hypocrites! It is so easy to condemn our medical profession – and rightly so. Of all the people in the world who should understand physiology and ecology – they should – but they do not.

When the unorthodox methods are used they are no better – they are doing not one whit better. Those who treat cancer with Laetrile, Koch, Krebiozen, etc. are only treating the symptom Cancer – not the disease – INADEQUATE PROTEIN METABOLISM. The physician whom we criticize, uses surgery, radiation, and chemical therapy. He also treats the symptom Cancer – not the disease – INADEQUATE PROTEIN METABOLISM. So let us not be hypocrites. Let us look at ourselves – let us find truth. Let us forget the "orthodox methods" and the "unorthodox methods". Let us accept the true law or principle of Cancer. Let us work this law so well and accomplish such profound results in every case that the orthodox and the unorthodox methods will soon be so outmoded we will laugh at ourselves and

*A speech by Dr. W. D. Kelley given to numerous health food groups.

say, "how primitive we were last year".

THE LAW OF CANCER

Cancer is nothing more than the symptom of protein metabolism malfunction. Any way we slice it, this pie is nothing more than a simple deficiency disease. But to successfully correct this condition one must approach it from the physiological and ecological points of view.

You can not have cancer unless three factors are present.

1. The presence of an ectopic germ cell.
2. The stimulating presence of the female sex hormone.
3. A deficiency of active pancreatic enzymes.

In my limited study of cancer I first had to develop a measuring device - a clinical test to determine the presence or absence of cancer - its growth rate - its absorption rate - and its approximate age. With my concept that cancer is a protein metabolism malfunction, we had a new basis for developing a new test. The Protein Metabolism Evaluation Index is a urine examination we developed and used to continue our studies. By trial and error the following things could be adequately determined:

1. The proper diet
2. The proper protein intake
3. The proper protein timing
4. The proper nutritional supplements needed
5. The proper dosage of these nutritional supplements
6. The proper timing of the nutritional supplements and diet

PHYSIOLOGY OF CANCER

With these facts at hand the physiology of Cancer was very evident and follows a definite pattern. We observed:

First – for one of three reasons the body fails to produce an adequate amount of active pancreatic enzymes.

a. 83% overworking the pancreas by intake of too much protein.
b. 10% neurological injury to pancreatic enzyme production
c. 7% malfunction of body chemistry inactivating the enzymes.

Second – Our test indicates that in 93% of all cancer cases this is a gradual malfunction. The average cancer patient has had cancer 39 months before it is clinically diagnosed. The important factor here is not that it is a slow growing thing – but rather what is happening to

the body during this growth time - and this is tragic. The body must have protein to live, but during this 39 months the body could not get enough protein from its food supply. So, it very gradually and generally evenly starts to sapping or destroying the muscle system to keep the blood protein at a minimal level to sustain life.

Third - now the conditions are ripe for the symptom Cancer to develop. All that is needed - something to stimulate the female sex hormone formation at the site of a misplaced ectopic germ cell. This is most often done by scar formation - such as a blow, bruise, a drop of tar in the lung, a sun-burn, an overdose of x-ray, or anything else that can cause the natural, normal scar formation procedure to take place in the body at the site of a latent ectopic germ cell. This normal thing happens to each of us each day - it is only when our protein metabolism is deficient that the symptom Cancer develops.

Now the ectopic germ cell thinks it is time to have a baby and starts growing a placenta (CANCER) in preparation for a baby that never develops. The only trouble is - this placenta just keeps on growing and will not stop. When the patient finally consults the physician he announces the condition of cancer and recommends surgery.

In the fourth step of cancer physiology one of two things happen:

a. The first thing that can happen, the cancer grows until it destroys the body. The only question here is when. Up until now, mostly by accident of ecology one person will last a long time and another person will go rapidly.

b. The second thing that can happen, also by accident of ecology, in a few cases, the right combination of circumstances occur and the cancer is dissolved or "cured".

ECOLOGY OF CANCER

Having briefly and crudely considered physiology in cancer, let us look into the ecology of cancer. Ecology in cancer is essentially the total environment in which the cancer victim finds himself. The physical condition the body has deteriorated into - the spiritual outlook - the mental state he finds himself. He must take into consideration the air he breathes - the food he eats - the fluids he drinks - the sounds he hears - the emotions he feels - the light he sees - the church he attends - the vocation in which he is employed - his past memory patterns - his childhood - his dreams, ambitions and goals of life. In ecology the total, whole, or complete man is taken into consideration. His physical, mental, emotional, and spiritual beings are consid-

cred in light of his total environment NOW.

By approaching the cancer victim ecologically it is quite a simple matter to successfully guide the treatment of a malignant condition. It is only the things that are not understood that lead to fear and present themselves as problems. For example, anyone guiding the treatment of leukemia who cannot successfully reverse the condition in less than a week does not know the first thing about cancer or the law of cancer.

We have prepared a little booklet entitled ONE ANSWER TO CANCER or **An ecological approach to the successful treatment of malignancy**, which gives in detail a method to properly adapt to inadequate protein metabolism and eliminate the symptom CANCER.

This booklet points out the basic steps in the ecology of Cancer.

1. The cancer victim must take the responsibility for his own treatment. The medical and related professions are in such a chaotic state of confusion, they can give very little help.
2. The cancer victim must determine if he has or has not a malignant condition.
3. The cancer victim must have a beautiful spiritual outlook and faith that this simple deficiency condition is being corrected in himself now and with ease.
4. The cancer victim must follow a carefully regulated program to detoxify the body.
5. The cancer victim must follow a carefully selected diet that is based upon an understanding of the physiology of cancer.
6. The cancer victim must give his body adequate time to rebuild itself.

WILLIAM DONALD KELLEY
D.D.S., M.S.

THE KELLEY RESEARCH
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GRAPEVINE, TEXAS 76051

Printed at
American Printing & Lithographing Co.
1600 S. Akard St., Dallas, Texas 75215

"*AN ECOLOGICAL APPROACH TO THE SUCCESSFUL TREATMENT OF MALIGNANCY* expresses the only theory of cancer I know, that adequately explains the successes and failures of all other attempts to treat cancer from radical surgery to faith healing."

JAN 28 1972
E. ROBERT SEAVER, CLERK

In the

Supreme Court of the United States

No. 71-962

WILLIAM DONALD KELLEY, ET AL,
Petitioners,

v.

THE TEXAS STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

PETITION OF WILLIAM DONALD KELLEY, ET AL FOR WRIT OF CERTIORARI TO THE FORT WORTH COURT OF CIVIL APPEALS (SECOND SUPREME JUDICIAL DISTRICT) AND THE TEXAS SUPREME COURT

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In the

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No.

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v.

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Respondent.

PETITION OF WILLIAM DONALD KELLEY, ET AL FOR WRIT OF CERTIORARI TO THE FORT WORTH COURT OF CIVIL APPEALS AND THE TEXAS SUPREME COURT

To the Honorable Supreme Court of the United States:

Come now William Donald Kelley and the Kelley Research Foundation, Inc., Petitioners, and make this, their Application for Writ of Certiorari, and in support thereof, would respectively show unto this Court the following:

OPINIONS OF THE COURT BELOW

The only opinion rendered by the Courts below came from the Ft. Worth Court of Civil Appeals, styled *Kelley, et al. v. Texas State Board of Medical Examiners*, 467 S.W.

2d 539 (1971), writ ref. n.r.e. The Court's opinion is appended hereto as Appendix "A".

STATEMENT OF THE JURISDICTION

The Judgment sought to be reviewed (T-75, Appendix "B") was entered by the 17th District Court of Tarrant County, Texas, on July 30, 1970. This Judgment was affirmed by the Fort Worth Court of Civil Appeals (467 S.W. 2d 539 — Appendix "A") on May 7, 1971, rehearing denied June 4, 1971. Petitioners made Application for Writ of Error to the Texas Supreme Court which was refused (without opinion) with the notation "No Reversible Error" on October 6, 1971, rehearing denied on November 3, 1971. This Application for Writ of Certiorari is being filed within ninety days from the date that the Texas Supreme Court denied a rehearing. Jurisdiction is conferred upon this Court by 28 U.S.C.A. Sect. 1257 (2) and (3).

QUESTIONS PRESENTED FOR REVIEW

The questions presented to this Court for review are as follows:

POINT 1

Does the Injunction, heretofore entered in this cause, which prohibits the publication, sale and or distribution of the booklet entitled "One Answer to Cancer" violate these Petitioners' rights to freedom of speech and press, as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States.

POINT 2

Can the State of Texas require any of your Petitioners to be licensed physicians in the State of Texas before

permitting Petitioners to publish their views and theories on cancer.

POINT 3

Is the Texas Medical Practice Act repugnant to the First or Fourteenth Amendments to the Constitution of the United States for the reason that said Act prohibits a person from publishing in the field of medicine unless such person is licensed by the State of Texas as a physician.

POINT 4

Does the publication "One Answer to Cancer" constitute a "clear and present danger" so as to justify a prior restraint on freedom of speech and press, in accordance with the First and Fourteenth Amendments to the Constitution of the United States, and in accordance with the opinions heretofore handed down by this Court.

POINT 5

Do the holdings of the Courts below that a doctor-patient relationship is not necessary to constitute the practice of medicine deny to Petitioners the rights guaranteed by the First or Fourteenth Amendments to the Constitution of the United States.

APPLICABLE PROVISIONS OF LAW

The applicable constitutional and statutory provisions in this cause are as follows:

(A) First Amendment to the Constitution of the United States providing that;

> Congress shall make no law * * * abridging the freedom of speech, or of the press; * * *

(B) Part of Sect. 1 of the Fourteenth Amendment to the Constitution of the United States which provides that;

No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

(C) Vernon's Texas Civil Statutes Annotated Vol. 12b, Articles 4495-4512 (Texas Medical Practice Act), with particular emphasis on the following:

Article 4496 — PHYSICIANS TO REGISTER — It shall be unlawful for anyone to practice medicine, in any of its branches, upon human beings within the limits of this State who has not registered in the District Clerk's Office of every county in which he may reside, and in each and every county in which he may maintain an office or may designate a place for meeting, advising with, treating in any manner, or prescribing for patients, the certificate evidencing his right to practice medicine, as issued to him by the Texas State Board of Medical Examiners. * * *

Article 4509 — * * * the Texas State Board of Medical Examiners shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The Texas State Board of Medical Examiners shall be represented by the Attorney General and/or the County or District Attorneys of this State * * *

Article 4510 — WHO REGARDED AS PRACTICING MEDICINE — Any person shall be regarded as practicing medicine within the meaning of this law:

(1) Who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat

> any disease or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; (2) or who shall diagnose, treat, or offer to treat any disease or disorder, mental or physical, or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; * * *

STATEMENT OF THE CASE

This Petition stems from a permanent injunction entered by the trial court which enjoins Petitioners from publishing a booklet entitled "One Answer to Cancer". The booklet in question concerns the Petitioners' theories as to the causes and cures for cancer.

Petitioner, Dr. William Donald Kelley, is a licensed dentist in the State of Texas, has a Master of Science Degree, and three years' credit towards a Ph.D. Dr. Kelley is not a physician, and is not licensed to practice medicine.

As a result of his being in the medical field, Dr. Kelley became interested in cancer research, and formed the Kelley Research Foundation. After many years of study, Dr. Kelley formulated his own ideas as to the cause of cancer and methods of treatment, and published his theories in a booklet entitled "One Answer to Cancer". The Medical Association opposed the distribution of the booklet and sought to have the State of Texas enjoin the publication through the Texas State Board of Medical Examiners, pursuant to the authority granted to the Board under the Texas Medical Practice Act. (Art. 4495-4512, p. 4 supra)

The State filed the injunction suit and obtained a temporary restraining order without notice on December 1, 1969 (T - 47). Petitioners answered the suit alleging that any such injunction would violate Petitioners' constitutional rights of freedom of speech and press (T - 57, 67). On January 15, 1970, the temporary restraining order was continued in the form of a temporary injunction (T-58). On July 30, 1970, the injunction was made permanent (T-75, Appendix B).

Petitioners appealed to the Fort Worth Court of Civil Appeals, specifying as assignments of error all of the constitutional grounds raised herein. The Court overruled all constitutional arguments, reasoning that the booklet did, in and of itself, constitute the practice of medicine: (467 S.W. 2d 539, 544; Appendix A p. A-8)

> We find and hold that the publication, "One Answer to Cancer", is a diagnosis, treatment, and offer of treatment, and therefore constitutes the practice of medicine under the provisions and within the meaning of the Texas Medical Practice Act, Art. 4510, et seq.

The Court further reasoned that because the publication did constitute the practice of medicine, the interest of the State to restrain an unlicensed person from practicing medicine was paramount to Petitioners' rights of freedom of speech and press: (467 S.W. 2d 539, 545; Appendix A p. A-10)

> The argument of the Defendants to the effect that assuming the pamphlet does constitute the practice of medicine, their right of free speech overrides the State's interest and right to protect the general public is untenable.

> It is the practice of medicine by an unlicensed person which creates an immediate danger to the public and entitles a Court of the State of Texas as a matter of law and equity to enjoin such unauthorized activities, so as to reasonably protect the public from unauthorized and unskilled practitioners.
>
> * * * The injunction is a permissible remedy authorized by the Medical Practice Act if such a remedy is the only reasonable means to accomplish the purposes of the Act.
>
> The constitutional rights of speech and publication are not absolute and in a given case where the public interest is involved, Courts are entitled to strike a balance between fundamental constitutional freedom and the State's interest in the welfare of its citizens. The Constitutional guarantee of freedom of expression must yield in the case at bar to afford reasonable protection to the public * * * .

After the Fort Worth Court of Civil Appeals overruled Petitioners' Motion for Rehearing, Petitioners applied to the Texas Supreme Court for a Writ of Error, again raising the constitutional grounds alleged herein. The Texas Supreme Court refused to hear the Application, and denied Petitioners' Motion for Rehearing.

ARGUMENT AND AUTHORITIES

Part A — Balancing of Interests is Not the Test

Although countless volumes of scholarly material have been written on the law pertaining to the subject matter, the underlying principles pertaining to freedom of speech cases are basic. The First Amendment rights of freedom of speech and press are fundamental rights, which are safeguarded from state infringement by the Due Process Clause of the Fourteenth Amendment. *De Jonge v. Oregon*, 299

U.S. 353, 364, 57 S. Ct. 255, (1937). As applied to the states, freedom of speech cases are broken down into two basic categories. The first, like the case at bar, is where the State seeks to suppress the speech itself; i.e., a "prior restraint" case. The second category is where the state seeks to punish, by criminal statute or otherwise, for words previously spoken, such as in *Gitlow v. New York*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925). The significant distinction between these two classes of cases is that in the latter class, the state seeks punishment only, while in a "prior restraint" case, the state seeks to suppress the speech itself. The Courts below failed to recognize this distinction.

The lower Courts are taking the attitude in this cause that all they need to do is balance the interest of the public to suppress against Petitioners' rights of free speech and press. Whichever the Court considers more important shall prevail. (Appendix A p. A-11, 467 S.W. 2d at p. 546):

> The constitutional rights of speech and publication are not absolute and in a given case where the public interest is involved, Courts are entitled to strike a balance between fundamental constitutional freedom and the State's interest in the welfare of its citizens. The constitutional guarantee of freedom of expression must yield in the case at bar to afford reasonable protection to the public. *Palmer v. Unauthorized Practice Comm. of the State Bar*, 438 S.W. 2d 374, supra; Article I, Sections 8 and 16, Constitution of Texas; *Gitlow v. New York*, 268 U.S. 652, 666, 668, 45 S.Ct. 625, 69 L.Ed. 1138 (1925).

Even if the foregoing is the law with reference to the punishment category of free speech cases, Petitioners believe that in the prior restraint category, such an interpretation of

the law is totally inaccurate and far afield from the decisions heretofore handed down by this Court. "Balancing of Interests" is precisely the type of doctrine which was objected to by Mr. Justice Douglas concurring in *New York Times v. U. S.*, 403 U.S. 713, 91 S. Ct. 2140, 2146 (1971):

> The Government says that it has inherent powers to go into court and obtain an injunction to protect that national interest, which in this case is alleged to be national security. *Near v. Minnesota, Ex Rel Olsen*, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357, *repudiated that expanse of doctrine in no uncertain terms.* (Emphasis added)

The only Federal case cited by the Court below in support of their holding in this area is *Gitlow v. New York*, 268 U.S. 652, 45 S. Ct. 625, 69 L. Ed. 1138 (1925). Although one may take phrases out of context from *Gitlow* in support of the holding below, *Gitlow* dealt only with the area of permitting punishment for those who abuse the First Amendment privileges. A prior restraint was not involved in *Gitlow*, and *Gitlow* is inapplicable as cited. Rather, the principles in *Gitlow* were basically the same as those quoted from from *Blackstone* by Chief Justice Hughes in *Near v. Minnesota*, 283 U.S. 697, 714, 51 S. Ct. 625, (1931):

> * * * Every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he published what is improper, mischievous or illegal, he must take the consequences of his own temerity.

Chief Justice Hughes made it crystal clear that the constitutional protections against prior restraint were much

greater than the protections from being punished for improper speech. *Near v. Minnesota, supra, pp.* 713-716.

It is one thing for a person to be able to speak and publish freely and be subject to punishment for abuse, but yet quite another to be subject to the law set forth by the Court below where a person cannot speak or publish at all in the first place. The Texas Supreme Court long ago recognized the difference between punishment on the one hand and prior restraint on the other. In speaking of the free speech provisions of the Texas Constitution, the Texas Supreme Court stated precisely what should be applicable to the case at bar by reason of the Federal Constitution. *Ex Parte Tucker*, 220 S.W. 75, 76 (Tex. S. Ct. - 1920):

> [P]unishment for the abuse of the right, not prevention of its exercise, is what the provision contemplates. There can be no liberty in the individual to speak, without the unhindered right to speak. It cannot coexist with the power to compel his silence or fashion a form of his speech * * *
>
> *It has never been the theory of free institutions that the citizen could say only what courts or legislatures might license him to say* * * * Every person shall be left at liberty to speak his mind on all subjects, and for the abuse of the privilege, be responsible in civil damages and subject to the penalties of the criminal law. (Emphasis added)

To Petitioners' knowledge, this Court has never held that a state may simply balance interests of the parties to justify a restraint on speech. This Court is now asked to accept a case on certiorari in which a state court cites a previous holding of this Court as standing for a new and

different concept in the area of prior restraint. The opinion below is a landmark decision in constitutional law. If permitted to stand, it will not only create new concepts and guidelines for prior restraint cases in Texas, but may very readily be followed in numerous other jurisdictions as well. Anybody shephardizing *Gitlow v. New York*, *supra* or *Dent v. West Virginia*, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 623 (1889) will locate the opinion of the Court below quite easily. Moreover, the opinion below will in all likelihood be reported in ALR 3d, by reason of the opinion below having cited 22 ALR 3d 1092 (Appendix A p. A-9). All of the ammunition is present for the opinion of the Court below to become well-recognized throughout the country. It follows therefore that all the criteria are present for the granting of this application for Certiorari.

Part B — The Clear and Present Danger Doctrine

Other than speech classified as obscene and "utterly without redeeming social value", this Court has recognized only one exeception permitting a prior restraint of free speech or press, that exception being the Clear and Present Danger Doctrine. The leading cases in this area have held that to justify a prior restraint, the evidence must establish an immediate danger of serious injury which is neither doubtful nor remote. The evil threatened must be substantive and the degree of emminence extremely high. *Whitney v. California*, 274 U.S. 357, 47 S. Ct. 641 (1927).; *Thomas v. Collins*, 323 U.S. 516, 65 S. Ct. 315 (1945), reh. den. 323 U.S. 819; *West Virginia State Board of Education v. Barnette*, 319 U.S.

624, 63 S. Ct. 1178 (1943); *Bridges v. California*, 314 U.S. 252, 62 S. Ct. 190 (1941). The present state of the law was recently summarized by Mr. Justice Brennan, concurring, in *New York Times Co. v. U. S.*, 403 U.S. 713, 19 S. Ct. 2140, 2147 (1971):

> The entire thrust of the government's claim throughout these cases has been that publication of the material sought to be enjoined "could" or "might" or "may" prejudice the national interest in various ways. But the First Amendment tolerates absolutely no prior judicial restraints of the press predicated upon surmise or conjecture that untoward consequences may result. Our cases, it is true, have indicated that there is a single, extremely narrow class of cases in which the First Amendment's ban on prior judicial restraint may be overridden. Our cases have thus far indicated that such cases may arise only when the Nation "is at war". *Schenck v. United States*, 249 U.S. 47, 52, 39 S.Ct. 247, 249, 63 L.Ed. 470 (1919) * * *. "The chief purpose of [The First Amendment's] guarantee [is] to prevent previous restraints upon publication." *Near v. Minnesota, Ex Rel Olsen, supra*, at 713, 51 S.Ct., at 630. Thus, only governmental allegation and proof that publication must inevitably, directly and immediately cause the occurrence of an event kindred to imperiling the safety of a transport already at sea can support even the issuance of an interim restraining order. In no event may mere conclusions be sufficient.

Petitioners believe in accordance with the law quoted above that anything short of a showing by the State in the case at bar that Dr. Kelley's publication would inevitably result in death to the readers would also be short of that showing necessary to constitute a clear and present danger. The first prerequisite that the State had to accomplish such

a showing was to have introduced evidence establishing unequivocally the falsity of the theories espoused in the publication. Even permitting a prior restraint had the foregoing been done would be giving the State the benefit of the doubt, as this Court has heretofore held that the truth or falsity of the publication is immaterial as far as a prior restraint is concerned. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 91 S. Ct. 1575 (1971). (When this statement has been used by this Court in the past, it has been used in the context that even if the published statements were false, this did not prevent the right to publish them. It follows afortiori that if Dr. Kelley's theories may be true, that the publication should be permitted to be published, regardless of whether or not he is licensed as a physician.)

Turning now to the evidence actually introduced, it is striking to note that the State did not introduce one word of testimony or one shred of evidence which even implies that there was anything dangerous or wrong with the theories set forth by Dr. Kelley in the publication. To the contrary, Dr. Robert Jones, a licensed Texas physician, testified that the publication was not dangerous and that the publication would be helpful to society (S.F. 165-166):

> Question: Doctor, would you give us your expert opinion, if you have one, as a physician, as to what this book says?
>
> Answer: This book proposes a theory as to the causation of cancer, which in my experience is somewhat unique. There are approaches to the study and the treatment of the disease that are really new to me, and many that are not new to me. The opinion that he has,

I think, could be considered controversial, but not impossible. In other words, nobody knows what causes cancer, and I think one man's theory is as good as another.

Question: Is it possible, then, that this book has some medical credence?

Answer: It is possible that this book does have some medical credence, and in certain areas, I am positive that there are directions that would be helpful for a person with cancer, yes, sir.

Question: Now, if a layman were to pick up this book and read it, doctor, in your opinion as a physician and as a medical man, is there anything in there that's dangerous to the average layman?

Answer: I do not think so.

The potential value to this country of Dr. Kelley's publication can be well-illustrated by some purportedly "startling new" discoveries by the medical community itself. It appears that the medical community may well be reaching the same theories as set forth by William Donald Kelley in the publication here at issue.

The theories set forth in "One Answer to Cancer" revolve in their entirety around the use of dietary intake to combat cancer. The intake of too much protein is labeled as the primary cause of cancer. (Appendix C, p. 23):

PROTEIN

We have maintained throughout this treatise that cancer is nothing more than a pancreatic enzyme deficiency. The greatest cause of this deficiency is the amount of second-hand protein fed into the body. The pancreas just simply cannot manufacture enough en-

zymes to digest the large volumes of milk, cheese, meat, and peanuts we eat and have enzymes left over to digest the foreign protein we know as cancer.

On June 4, 1971, Dr. Robert A. Good, one of the world's leading immunologists, published his research which was sponsored by grants from the American Heart Association, the American Cancer Society, the March of Dimes and the U. S. Public Health Service. The report was published in *Nature*, Vol. 231, No. 5301, pp. 323-325. On October 20, 1971, Dr. Good announced to the press his findings as contained in the report above cited. His announcement was published in newspapers from coast to coast from October 20-26, 1971. The publication, as it appeared in the New York Times, is set forth in Appendix D. His findings are almost identical to the theories propounded in "One Answer to Cancer."

In the November 6, 1971, issue of the *NATIONAL OBSERVER*, Dr. Roger J. Williams' theories on fighting cancer by nutrition are set forth in an article entitled "Super Nutrition Proposed for Fighting Cancer." This article was preceded by a similar article in the New York Post on October 26, 1971. Both articles are very much akin to the practice set forth in "One Answer to Cancer" (The New York Post article is reprinted in Appendix D)

Dr. Kelley's publication and theories long preceded those set forth by the other authorities above, and indeed, a new area and approach to cancer research may well be coming to the surface. Theories such as those set forth by Dr. Kelley in "One Answer to Cancer" should be encouraged, not discouraged.

One could understand the State seeking to enjoin a publication which would inevitably send people to their graves, or cause other catastrophic events of like consequence, but it taxes credulity to imagine the permitting of an injunction which may very possibly be of significant medical value, simply because the author is not licensed as a physician.

Not only did the evidence show a complete lack of anything dangerous in the publication, but the pleadings of the State were to the same effect. The only danger even alleged by the State in their pleadings (T - 6) was that the publication constituted a violation of law (the Texas Medical Practice Act) and was therefore dangerous. Accordingly, the Courts below had nothing else upon which to support the finding that the publication created a clear and present danger other than the finding that the publication constituted the practice of medicine. This reason was the only reason given by the Courts below in support of their holding that there was a clear and present danger (Appendix A p. A-10):

> It is the practice of medicine by an unlicensed person which creates an immediate danger.

Petitioners submit that the Court's logic in this regard is begging the question. If the publication creates a clear and present danger, then the same danger is created regardless of whether or not the author is a physician. The existence of a clear and present danger must be determined by the contents of the words that are spoken, not by the qualification of the author.

Even if one assumes as true the generalization that it is dangerous to the interests of the community for unlicensed person to practice medicine, such a statement is a generalization only, and it does not necessarily follow that each time an unlicensed person practices medicine that a danger will result. Petitioners do not dispute the right of the State to freely regulate the practice of medicine in that area normally regarded as practicing medicine, but where the practice of medicine consists only of a publication, the court must determine in each case whether or not the publication constitutes a clear and present danger so as to justify a prior restraint. This Court has heretofore pointed out that every case of prior restraint must stand on its own two feet, and in each individual case, the court must inquire whether the gravity of the evil, discounted by its improbability, justified such invasion of free speech as is necessary to avoid the danger. *Dennis v. U. S.*, 341 U.S. 494, 71 S. Ct. 857 (1951). Broad generalizations that any publications in a given area constitute a clear and present danger are not sufficient, and such a generalization is precisely what the Court has done in this case without any evidence or any finding of the danger itself.

The publication here under consideration does more than present the author's theories on cancer. In addition, it is a criticism of the medical profession's efforts in this area, as the following quotations from the publication indicate:

> Under the very best of conditions, the accepted methods of clinical judgment and biopsy are inadequate. This is not specifically the fault of your doctor,

> for he is doing the best he knows. His education or knowledge is lacking in this area. (T-34; Appendix C. p. 11)
>
> The organized medical profession is spending well over one million dollars each day in the United States alone, to find a "cure" for cancer, and has never seriously investigated the possibility that cancer could be a deficiency disease. (T-31; Appendix C. p. 5)
>
> Today, most clinicians have the mistaken belief that cancer is complex; a number of different diseases, each having its own cause. Nothing could be further from the truth. (T-32; Appendix C. p. 7)

Norman Dacey heretofore published "How to Avoid Probate!" which criticized the legal profession in much the same way as Dr. Kelley has criticized the medical profession. For the same reasons as Petitioners urge herein, Dacey's publication was held to be protected by the First Amendment against the allegation that the publication constituted the practice of law. *New York County Lawyers' Assn. v. Dacey*, 287 N.Y.S. 2d 422, 234 N.E. 2d 459, adopting the dissenting opinion in 283 N.Y.S. 2d 984 (1967).

> Dacey's criticism of what he considers the high cost of probate is a right of speech to which he is entitled. Of course, if the exercise of Dacey's right to freedom of speech by this publication violates reasonable standards erected for the protection of society, or of important interests of society, his right could be subordinated for the common good and the protection of the whole. In my view, this book may not be so considered. The dangerous tendency or Clear and Present Danger doctrines (citing cases) are not applicable * * * Unless we are to extend a rule of suppression beyond the

> obscene, the libelous, utterance of or tending to incitement, and matters similarly characterized, there is no warrant for the action here taken.

The same conclusion was reached by the Second Circuit with reference to Dacey's litigation in Federal Court. 423 Fed. 2d 188, 192 (2d Cir. 1969). The case at bar, like *Dacey*, is simply not susceptible to a finding of clear and present danger, and the injunction issued is without basis in law.

Part C — The Lack of a Doctor-Patient Relationship

The Courts below held that the booklet constitutes the practice of medicine under the Texas Medical Practice Act, and is therefore ipso facto a clear and present danger which must be enjoined (Appendix A p. A-8, 10). If, however, the booklet in question does not constitute the practice of medicine, then there has been no clear and present danger, and the injunction has violated the Due Process Clause of the Fourteenth Amendment. Although the foregoing sentence may appear at first glance not to follow logically, the argument is reasoned upon the logic of the Court below. The one and only danger created by the publication, according to the Court below, is the finding that the publication constitutes the practice of medicine. In the words of the Court (467 S.W. 2d at 546; Appendix A p. A-10):

> It is the practice of medicine by an unlicensed person which creates an immediate danger to the public and entitles a Court of the State of Texas as a matter of law and equity to enjoin such unauthorized activities, so as to reasonably protect the public from unauthorized and unskilled practitioners.

Assuming arguendo that the practice of medicine without a license is a clear and present danger, as contemplated by the prior decisions of this Court, there could still be no injunction against the publication if the publication did not in fact constitute the practice of medicine. In that case, the only danger found by the Courts below would not exist, and the injunction would be violative of the Fourteenth Amendment. Accordingly, Petitioners urge that the publication does not constitute the practice of medicine.

It seems elementary that an essential ingredient of practicing medicine is the actual existence of a relationship between the doctor and patient. Indeed, it is only because of this relationship that the State requires a license in the first place.

An analagous situation is the litigation of Mr. Norman Dacey, in connection with his publication entitled "How to Avoid Probate!" The New York Bar brought an action against Dacey to enjoin the publication and distribution of the book, and to have Dacey held in criminal contempt for the unauthorized practice of law. The New York Supreme Court enjoined the sale and distribution of the book. *New York County Lawyers' Assn. v. Dacey*, 282 N.Y.S. 2d 985 (S. Ct. 1967). Dacey's appeal from the New York Supreme Court to the New York Appellate Division was unsuccessful, and in October, 1967, the New York Supreme Court was upheld in a four-to-one decision, Justice Stevens dissenting. *New York County Lawyers' Assn. v. Dacey*, 283 N.Y.S. 2d 984 (1967). However, two months later in

December, 1967, the New York Court of Appeals reversed the decision of the Appellate Division, and adopted the dissenting opinion of Justice Stevens. *New York County Lawyers' Assn. v. Dacey*, 287 N.Y.S. 2d 422, 234 N.E. 2d 459 (1967). At the same time, Dacey was engaged in litigation in Federal Court. On appeal to the Second Circuit, Judge Irving Kaufman, in commenting upon Dacey's State litigation, pointed out that the reason for Dacey's success was premised on the same argument which Petitioners urge in the case at bar, that being that the publication could not constitute the practice of medicine because of the lack of the doctor-patient relationship. *Dacey v. New York County Lawyers' Assn.*, 423 Fed. 2d 188, 190 (2d Cir. — 1969).

> In concluding that the sale and distribution of *"How to Avoid Probate!"* did not constitute the unauthorized practice of law, Justice Stevens had emphasized that the book was sold to the public at large and that no relation of personal trust and confidence arose between Dacey and the purchasers of his book.

Justice Stevens' opinion, with medical practice substituted for legal practice, states precisely why Dr. Kelley's publication cannot be considered the practice of medicine. 283 N.Y.S. 2d 984, 997-999, as adopted in 287 N.Y.S. 2d 422:

> Stripped of the arguments and contentions of the various parties, the question may be briefly and baldly expressed; does the writing, publication, advertising, sale and distribution of "How to Avoid Probate!" constitute the unauthorized practice of law * * * It cannot be claimed that the publication of a legal text which purports to say what the law is amounts to legal practice. And the mere fact that the principles and rules

> stated in the text may be accepted by a particular reader as the solution to his problem, does not affect this * * * Dacey's book is sold to the public at large. There is no personal contact or relationship with a particular individual. Nor does there exist that relation of confidence and trust so necessary to the status of an attorney and client. This is the essential of legal practice — the representation and the advising of a particular person in a particular situation. The lectures of a law school professor are not legal practice for the very reason that the principles enunciated or the procedures advised do not refer to any activity in immediate contemplation, though they are intended and conceived to direct the activities of the students in situations which may arise * * * In order to sustain Petitioner's position, one has to conclude that the book by its very nature comprises the unauthorized practice of law. "How to Avoid Probate!" is in one sense a do-it-yourself kit * * * Every individual has a right to represent himself if he chooses to do so, and to assume the risks attendant upon what could prove a precarious undertaking * * * In all the cases where there was a holding of unlawful practice of law, there was some employment, expressed or implied, resulting either from contract, designation or assignment. It would seem logical that for one to be guilty one must improperly or illegally have created or assumed such a relationship.

If Dr. Kelley's publication constitutes the practice of Medicine, then virtually every publication in the medical field likewise constitutes the practice of medicine. All of a sudden, the states will have the authority to regulate scientists, researchers, and others from publishing in a field so vital to the health and public welfare of this Country. Similarly, in any other profession, trade or occupation where a

license is required, the states would be able to regulate any and all publications in such profession, trade or occupation by holding such publications to constitute the practice of the respective profession, trade or occupation. Moreover, in most instances where a state requires a person to obtain a license in a given profession, a license issued by another state in the same profesion will not be sufficient. For example, under the Texas Medical Practice Act, a person who is licensed to practice medicine in another state cannot practice in Texas, and is just as much in violation of the law by practicing medicine in Texas as is an individual practicing medicine in Texas with no license at all. Therefore, in accordance with the holding of the Courts below, physicians licensed in New York, California, Michigan or any other state are not permitted to have articles published in Texas. The same would be true of every other profession. No legal distinction can be drawn between a New York physician publishing in Texas and the case at bar. As a practical matter, the answer is in the fact that a publication directed to the public at large simply does not constitute the practice of medicine. To hold otherwise would be to sanction a series of restraints on published material so as to bring a complete turnabout in the law of freedom of the press as it is known today.

Part D — Constitutionality of the Texas Medical Practice Act

This Court in the past has, on occasion, held that this Court is bound to accept the State Court's interpretation

of a State statute which may be in question. *Coleman v. Alabama*, 399 U.S. 1, 9-10, 90 S. Ct. 1999, 2003, 26 L. Ed. 2d 387 (1970); *Kingsley International Pictures Corp. v. Regents of the University of the State of New York*, 360 U.S. 684, 688, 79 S. Ct. 1362, 1365, 3 L. Ed. 2d 1512 (1959). Such a holding in the instant case would let stand that part of the opinion of the Court below to the effect that the publication in question constitutes the practice of medicine under the Texas Medical Practice Act, and that the Texas Medical Practice Act authorizes the enjoining of the publication. Accordingly, should this Court for any reason be unwilling to reverse that part of the opinion below just set forth, then Petitioners urge that those parts of the Texas Medical Practice Act which deny Petitioners the right to publish and which authorize the injunction granted below, are in violation of the First and Fourteenth Amendments to the Constitution of the United States.

Petitioners have heretofore urged that the injunction itself is unconstitutional. Without being repetitious, all of the reasons heretofore urged that the injunction is unconstitutional, as set forth in Parts A, B and C of the argument herein, are also urged as the same grounds for holding the Act itself unconstitutional by reason of the Act prohibiting Petitioners' right to publish in the first place (Art. 4498). Likewise, the identical grounds and arguments thereunder are more than sufficient to hold the Act unconstitutional by reason of the Act's authorizing the injunction granted by the Courts below (Art. 4509).

Moreover, the Texas Medical Practice Act, when viewed in accordance with the holding of the Court below, specifically requires an individual to obtain a license from the State before permitting the individual to publish. This type of law has heretofore been condemned by this Court as being in violation of the Fourteenth Amendment. *Saia v. New York*, 334 U.S. 558, 68 S. Ct. 1148 (1948). Petitioners urge the same holding in the instant case.

Finally, the Act does not contain any provision requiring a court to find a clear and present danger before issuing an injunction creating a prior restraint. By not requiring a finding of clear and present danger, the Act omits the most essential ingredient necessary to justify prior restraints. (See argument Part B supra). It is immaterial whether or not there is a clear and present danger in the instant case, because the Act does not require a finding that there is one in the first place. The injunction is authorized by the Act regardless of whether the danger does or does not exist. Accordingly, the Act violates the Fourteenth Amendment to the United States Constitution.

Part E — Conclusions

This Court has held that any case of prior restraint comes to this Court with a very heavy burden against the validity of such restraint. *Organization for a Better Austin v. Keefe*, 402 U.S. 415, 91 S. Ct. 1575 (1971). The State has not even taken the first step to overcome the burden in the case at bar.

Many of the leading cases in the free speech area heretofore handed down by this Court have set forth the reasons, underlying principles and importance of the free speech guarantees in this country, with particular emphasis on the concept of being able to discuss new and different ideas. Mr. Justice Brandeis, concurring in *Whitney v. California*, 274 U.S. 357, 47 S. Ct. 641 (1927), stated that "Men feared witches and burnt women. It is the function of speech to free men of the bondage of irrational fears." Admittedly, the theories propounded by Dr. Kelley in "One Answer to Cancer" are new, different and unique, and certainly cannot be expected to be readily accepted by the medical society, a profession of which Dr. Kelley is not a member. But to permit this society, through the arm of the State to obliterate these new ideas is to shoot a bullet through the very heart of the First Amendment. Should Thomas Edison not have been permitted to tell people about an electric bulb for his lack of being licensed as an electrician, this brief would be read over gas lighting. The contents of "One Answer to Cancer" is precisely the nature of speech which the First Amendment was intended to protect, that being the right of individuals to enable society to progress by permitting individuals to freely distribute their new and different ideas, no matter how unacceptable such ideas may appear at the onset.

To sanction the injunction entered below will apparently be the first time that any such injunction has been sanctioned in the fields of science and medicine. It is of the utmost importance for the very state of health and wel-

fare of this country that these fields in particular be left wide open to free and uninhibited discussion without regard to the licenses possessed by the person speaking.

Libraries and bookstores are full of numerous publications in numerous areas requiring licenses, by authors who are not so licensed in such areas. The sustaining of this injunction would give every professional organization in this country the authority to eliminate any such publication as they may not desire, as well as giving all such professional associations the tools necessary to carry forth legal blackmail as to any unlicensed author publishing in their field. The same blackmail could be carried forth as to an author not licensed in the particular state in question.

In the field of criminal law, this Court has set forth extremely stringent procedural requirements, and in so doing, has oftentimes freed a man obviously guilty so that the innocent would be protected at a later date. Likewise, in the area of free speech, this Court has protected some obviously objectionable speech from prior restraint so as to have set the guidelines for the type of speech which should be protected and encouraged, such as "One Answer to Cancer." Petitioners submit that the Courts below have entirely ignored these guidelines.

SUMMARY

PART A — The test used by the Courts below in justifying the injunction creating a prior restraint was a simple test of balancing of interests. Even if this is the test to determine

whether or not punishment is permitted for speech already spoken, this is not the test to determine whether or not a prior restraint is permitted. The test used by the Court below creates a new and different principle in the area of constitutional law regarding free speech.

PART B — The correct test to use in a case of prior restraint is to determine whether or not there exists a clear and present danger in accordance with the guidelines heretofore set forth by this Court. The only danger found by the Court below was the fact that the author of "One Answer to Cancer" was not licensed as a physician. Such a finding is not sufficient to constitute a clear and present danger in accordance with this Court's prior decisions, and such a finding is a generalization only. Whether or not the publication constitutes a clear and present danger should be determined independently of the author's qualifications. The danger must come from the contents of the publication, not from the author's lack of a license.

In addition to presenting the author's theories, the publication in question is a criticism of the medical profession, and is further constitutionally protected by the First Amendment.

PART C — The only clear and present danger found by the Court below was that the publication constituted the practice of medicine by an unlicensed physician. Petitioners contend that the publication does not constitute the practice of medicine because of the lack of a doctor-patient relationship. The First and Fourteenth Amendments prohibit the court

from classifying the publication as the practice of medicine and requiring a license therefor. If the publication does not constitute the practice of medicine, the clear and present danger found by the Court below ceases to exist and the injunction must be dissolved.

PART D — Assuming that the publication does constitute the practice of medicine under the Texas Medical Practice Act, then the Texas Medical Practice Act is violative of the First and Fourteenth Amendments for the reasons that: (1) The First and Fourteenth Amendments prohibit the state from requiring an individual to obtain a license in order to practice free speech: (2) The Act, by classifying any publication in the field of medicine as a clear and present danger (in accordance with the interpretation of the Court below) is a generalization only, and is inadequate to justify a prior restraint in accordance with the decisions heretofore handed down by this Court; (3) The Act permits the issuance of an injunction creating a prior restraint without requiring a finding that the publication to be enjoined creates a clear and present danger. The injunction is authorized regardless of whether the danger does or does not exist.

PART E — The speech sought to be protected in the case at bar is the type of speech which goes to the very heart and intent of the First Amendment. The enjoining of a publication in the field of science and medicine is unheard of and protection of speech in these areas should be first and foremost as to all areas of speech sought to be protected by the courts.

RELIEF SOUGHT — PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioners pray that the holding of the Texas Supreme Court that there is "no reversible error" be reversed, that the decision of the Fort Worth Court of Civil Appeals be reversed, and that the injunction heretofore issued in this cause prohibiting the distributing, offering for distribution, offering to sell or selling any publication, including the contents of the publication and booklet entitled "One Answer to Cancer" be dissolved, and that Petitioners recover all costs of court, together with such other and further relief, both general and special, legal and equitable, to which Petitioners may be justly entitled.

Respectfully Submitted,

MARGOLIS & STAFFIN
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1226 Commerce Street
Dallas, Texas 75202

By: _____
Harry W. Margolis

CERTIFICATION OF SERVICE

I, Harry W. Margolis, Attorney of Record for Petitioners in the above cause, do hereby certify that I have, on this 26 day of January, 1972, sent by first class United States mail, postage prepaid, three copies of this Application for Writ of Certiorari to the following attorney, being the attorney for Respondent, at the address indicated:

Mr. Guy C. Fisher
Assistant Attorney General
Capitol Building
Austin, Texas

Harry W. Margolis

APPENDIX A

No. 17195

IN THE COURT OF CIVIL APPEALS FOR THE SECOND SUPREME JUDICIAL DISTRICT OF TEXAS

WILLIAM DONALD KELLEY ET AL.
Appellants,

v.

TEXAS STATE BOARD OF MEDICAL EXAMINERS
Appellee.

FROM THE DISTRICT COURT OF TARRANT COUNTY

OPINION

This appeal is from a permanent injunction granted against the defendants, William Donald Kelley, individually and d/b/a The Kelley Research Foundation, and The Kelley Research Foundation, Inc., a corporation, for practicing medicine without a license. Trial was to the court. Findings of fact and conclusions of law were made and filed. The suit against the defendants was initiated by the Texas State Board of Medical Examiners as plaintiff. The parties will be designated as plaintiff and defendants or by name as in the trial court.

The contentions of the defendants on this appeal are summarized as follows:

First — The court erred in its findings of a great many of the extensive findings of fact made by it and in its conclusions of law based thereon. Defendants assert that many of the findings of fact are insignificant and discussion and

argument pertaining thereto will be omitted because the record is self-explanatory.

Second — There is a lack of evidence to establish that Kelley's examination and testing of the two State employees constituted anything except the practice of dentistry because everything he did was within the boundaries of such practice.

Third — Finally it is contended by the defendants that (1) the publication, "One Answer to Cancer," does not come within the Medical Practice Act and does not violate the specific terms of the Act itself; (2) it is absolutely impossible to practice medicine by the publication and distribution of a book in the absence of a doctor-patient relationship; and (3) assuming the book constitutes the practice of medicine, which is denied, the guarantee of free speech and freedom of press guaranteed by the U. S. and Texas Constitutions override the interest of the State to suppress or prohibit the publication.

We affirm.

It is undisputed that the defendant Kelley is licensed to practice dentistry in the State of Texas. It is also undisputed that Kelley is not licensed to practice medicine in this State. The same is true of The Kelley Research Foundation, Inc.

Based upon the oral argument and the brief of defendants it would appear that their primary concern pertains to that portion of the injunction which prohibits the publication and distribution of the pamphlet, "One Answer to Cancer." Defendants say that since they have not and do not intend to practice medicine that an injunction prohibiting such practice will not affect them.

The practice of medicine is defined in Art. 4510, The Texas Medical Act, V. A. C. S., as follows:

"Any person shall be regarded as practicing medicine within the meaning of this law:

"(1) Who shall publicly profess to be a physician or surgeon and shall diagnose, treat, or offer to treat, any disease

or disorder, mental or physical, or any physical deformity or injury, by any system or method, or to effect cures thereof; (2) or who shall diagnose, treat or offer to treat any disease or disorder, mental or physical or any physical deformity or injury by any system or method and to effect cures thereof and charge therefor, directly or indirectly, money or other compensation; provided, however, that the provisions of this Article shall be construed with and in view of Article 740, Penal Code of Texas, and Article 4504, Revised Civil Statutes of Texas as contained in this Act. . . ."

Article 4504, V. A. C. S., provides that, "The provisions of this Chapter do not apply to dentists, duly qualified and registered under the laws of this State, who confine their practice strictly to dentistry; . . .". .

The practice of dentistry in Texas has been defined by Articles 4543, et seq., to undertaking and offering to diagnose, treat, operate or prescribe by any means or methods for any disease, pain, injury, deficiency, deformity, or physical condition, of the human teeth, oral cavity, alveolar process, gums or jaws. (Art. 4551a).

The term "alveolar process" means the bony ridge of either jawbone, which contains the holes or sockets for the roots of the teeth.

A person who is duly licensed as a dentist is not authorized to practice medicine unless he is also duly licensed to practice medicine pursuant to Article 4495, et seq., V. A. C. S.

"One Answer to Cancer," subtitled, "An Ecological Approach to the Successful Treatment of Malignancy" was authored by William Donald Kelley, individually and d/b/a The Kelley Research Foundation in 1967. It was copyrighted in May and in June of 1969. The Kelley Research Foundation charter was approved on December 30, 1969, a date subsequent to the hearing on the temporary injunction. The Articles of Incorporation were signed by the incorporators, William Donald Kelley and wife, Sue Kelley, and

Hood C. Hammond, on December 15, 1969. The offices of Kelley and the Research Foundation are maintained at 205 E. Worth, Grapevine, Texas. The registered agent of the corporation is the defendant, Kelley.

The address of The Kelley Research Foundation appears several times in the pamphlet in which direct solicitation is made for "contributions, donations, or gifts," to help with research projects.

We have carefully examined the entire record in this cause. In our opinion the twenty-seven findings of the trial court which follow this paragraph are fully supported by the evidence and none of such findings are against the great weight and preponderance of the evidence. (1) Dr. Kelley disseminated diagnostic methods of systems, treatment methods, systems and regimes; (2) Dr. Kelley disseminated offers to treat and thereby control, curb or cure certain diseases and disorders, for a stated or known charge; (3) he advocated that a "deficiency of pancreatic enzymes" may be a disease or disorder, physical deformity or otherwise; (4) Dr. Kelley performed certain diagnoses on various individuals through the use of certain tests designed to determine different conditions or functions of the body. Utilizing such test, defendant could tell if pancreas was working properly; (5) Dr. Kelley's examination revealed the pancreas and prostate of the State agent not working properly; (6) very few dentists known to defendant perform blood tests; all the dentists Dr. Kelley knows used laboratories for blood tests; (7) that the functional metabolism index (of defendant Kelley) is not limited to an aid in determining if diseases or disorders, physical deformities or injuries of the oral cavity exist, but rather is a diagnostic technique employed by defendant culminating in a treatment or an offer to treat certain diseases, disorders, physical deformities or injuries consistent with the contents of the book "One Answer to Cancer"; (8) that it is the basic principle of those licensed physicians in Texas that medical professional literature is for the other physicians who are licensed to diagnose and practice; (9) that the book "One

Answer to Cancer": contains certain diagnoses, treatment or offer to treat cancer and other diseases, disorders, etc.; (10) that the purchase price of the book may be paid indirectly as part of the fee for performance of a blood test and examination; (11) that the book implies and states that defendant is a doctor without any qualification or exception as to his being only a licensed dental practitioner; (12) the word "doctor" on the cover implies that he is a physician; (13) that the sub-title "An Ecological Approach to the Successful Treatment of Malignancy" is a concise summary and that the contents relate to a diagnosis, treatment, or offers to treat the system, or bodily disease or disorder, physical deformity or injury; (14) that following the regime in the book could be harmful and detrimental to the body; (15) that the defendants developed their own system or method of disgnosis and treatment for the purpose of combating cancer and other diseases or disorders; (16) that defendant used the book to advertise to secure patients to enable defendant to treat, diagnose and effect cures, and charge for such services directly or indirectly; (17) that the distribution of the book is a grave threat and a clear and present danger of physical or mental injury; or that it is harmful to the general public; (18) that the defendant told Albert Crites that he would be able to determine by the use of the blood test whether or not Crites has cancer in and throughout his body; (19) that a receipt was issued to Albert Crites for a blood test, diagnosis and treatment recommended by defendant; (20) that defendant performed a diagnosis by telling Albert Crites that he did not have cancer but was suffering from pancreatic disorder, which contributed to Crites' general tired feeling; (21) that defendant treated or offered to treat Crites' pancreatic disorder by prescribing certain items as a regime or method to combat the pancreatic disorder and the general tired feeling; (22) that the defendant, William Donald Kelley, told John Sortore that a blood test would reveal if he had cancer in and throughout his body; (23) that the defendant performed a diagnosis by telling Sortore that the blood test indicated that Sortore had a physical disorder of the

prostate and liver; (24) that the defendant treated or offered to treat John Sortore by prescribing certain items as a regime or system to combat the prostate and liver disorders and Sortore's generally tired feeling; (25) that defendant, William Donald Kelley, claimed that he was able to diagnose and determine disorders in a period of four (4) days, whereas a licensed physician would take six years; (26) that John Sortore correctly concluded that defendants were diagnosing and treating or offering to treat him for prostate and liver disorders, as such disorders were related to his body and not as such to his teeth; and (27) that a receipt was issued to John Sortore for examination and lab test.

"In construing the Medical Practice Act, and in determining what constitutes the practice of medicine thereunder, it has been the long and consistent holding of this court that one who publicly professes to treat diseases or disorders, and to effect cures thereof, or one who in fact treats diseases or disorders as a profession or avocation is practicing medicine, regardless of the system or method employed, the name by which the system is known, or whether or not drugs or surgery are used. The practice of medicine, as contemplated is defined by law is not restricted to the treatment of diseases and disorders of the human body by the use of drugs or surgery." Ex Parte Halsted, 182 S.W. 2d 479, 483 (Ct. of Crim. App. of Texas, 1944).

Therefore, if, as prescribed by the Medical Practice Act, Article 4510, et seq., V. A. C. S., the evidence shows either of the above forms of practicing medicine, as defined in Ex Parte Halsted, supra, then the injunction as entered by the trial court has adequate support at law, as it applies to defendant, Kelley.

The Legislature by statute may make reasonable classifications of practitioners. Such classifications are not inhibited by the provisions of the 14th Amendment to the Federal Constitution. Ex Parte Halsted, supra; Dent v. West Virginia, 129 U.S. 114, 9 S. Ct. 231, 32 L. Ed. 623. The practice of dentistry has been restricted in the State by Articles

4543, et seq., supra. The limitation of such practice has been previously described above. The fact that the defendant, Kelley, was a duly licensed dentist, did not authorize him to practice medicine. A dentist who publicly represents himself as a dentist and who limits his practice to that of a dentist is excepted from the law requiring a certificate for the practice of medicine. When he represents himself as a physician by publicly professing to diagnose, treat and effect cures for cancer or is in fact diagnosing, treating and effecting cures for cancer for pay, he is not within the exception provided by law, as it applies to dentists.

The book, "One Answer to Cancer," its contents and textual material and the statements made therein by defendant in and of itself constitutes a "public profession" of the practice of medicine by the defendant. It is the combined effect of the entire book and not just the front page, which undoubtedly caused the trial court to conclude that said publication represented a "public profession" of the practice of medicine. Aside from the pamphlet the defendant, Kelley, publicly professed to both Albert Crites and John Sorotore, that he could determine by the use of a blood test whether they had cancer. This constitutes a public profession of the practice of medicine. It is not necessary in connection with such statements or activity to say you are a medical doctor, a physician or a surgeon, if what you say and do fall within the definitions of the Texas Medical Practice Act. The defendant admits that he used his metabolism index for determining the different functions and conditions of the body for about 25% of his patients. By his own admission therefore, he was actively holding himself out publicly as a physician by his use of such test.

Under the second test, by which a person is regarded as practicing medicine, the trial court would have considerably less difficulty in determining that the defendant Kelley was diagnosing, treating, or offering to treat and effect cures for money and was therefore not limiting his activities to the practice of dentistry.

We find and hold that the defendant, Kelley, publicly professed to be a physician or surgeon and that he was engaged in the unlawful practice of medicine within the meaning of the Texas Medical Practice Act, Article 4510, et seq., V. A. C. S., because of his conduct above described in connection with his authorship of the pamphlet, "One Answer to Cancer," and his conduct with reference to Crites and Sortore.

The defendant, Kelley, contends that the statutes have failed to clearly draw the line between the practice of dentistry and the practice of medicine. We disagree. The statutes distinctly restrict the practice of dentistry to the areas of the body mentioned above and the treatment of the general conditions and functions of the body are reserved to medical doctors.

The testimony of Albert Crites and John Sortore concerning the actions and statements of the defendant, Kelley, is more than adequate to support the findings of the Court. Kelley as a licensed dentist did not confine his practice to dentistry. He was practicing medicine. The trial court was correct to enjoin such unauthorized practice.

We come next to the points by which defendants contend that the publication, "One Answer to Cancer," when tested by the provisions of the Texas Medical Practice Act, is not a publication which constitutes the practice of medicine in any form, and assuming it was, the injunction as entered is too broad and exceeds statutory authority in enjoining the distribution and sale of the publication rather than to limit such injunction to sale only.

We find and hold that the publication, "One Answer to Cancer," is a diagnosis, treatment, and offer of treatment and therefore constitutes the practice of medicine under the provisions and within the meaning of the Texas Medical Practice Act, Art. 4510, et seq., supra. Ex Parte Halsted, 182 S.W. 2d 479, supra. The trial court's conclusion that the publication constitutes an advertising scheme wherein the defendant Kelley solicits medical patients is fully sup-

ported by an examination of the pamphlet itself. It becomes more obvious when considered along with the testimony and evidence adduced through the witnesses, Albert Crites and John Sortore.

Both Crites and Sortore stated that they received a copy of "One Answer to Cancer" upon the payment of $1.00, as well as an examination and lab test fee of $50.00, while being treated by Kelley. The record fully supports the findings that defendants have utilized the book, "One Answer to Cancer," as an advertising scheme, with which to secure individuals as patients, to enable defendants to diagnose, treat, or offer to treat a disease or disorder, physical deformity or injury by a system or method described within said book, attempting to effect cures thereof, and for which such patients were charged directly or indirectly.

The continued distribution of the book, directly or indirectly by the defendants, would constitute a grave, immediate threat of irreparable harm, a clear and present danger of physical or mental injury or harm to the general public. Such a threat would continue to exist although defendants individually may be enjoined from the practice of medicine. The publication is being used as an illegal tool to aid and abet the unlawful practice of medicine in which actual doctor-patient relationships are being formed. Grievance Committee of Bar of Fairfield Co. v. Dacey, 154 Conn. 129, 222 A. 2d 339, 22 A. L. R. 3d 1092. In the above case the Connecticut Court enjoined the further sale and publication of legal forms. The appeal was dismissed by the U. S. Supreme Court for want of a substantial federal question. 386 U.S. 683, 18 L. Ed. 2d 404, 87 S. Ct. 1325.

The case of Palmer v. Unauthorized Practice Com. of State Bar, 438 S.W. 2d 374 (Houston Civ. App., 14th Dist., 1969, no writ hist.) involved an action for injunctive relief to restrain defendants from engaging in alleged unauthorized practice of law by offering for sale to the general public wills and will forms. The district court granted temporary injunctive relief. On appeal the Court of Civil Appeals held that the sale of will forms to the public by untrained

laymen fell within statutory prohibition barring an unlicensed person from practicing law in this State. The case emphasized the right of the State to protect the public interest and the welfare of its citizens and that constitutional guarantee of freedom of expression must yield to permit the rendition of such a decree as is necessary for the reasonable protection of the public.

The defendants contend that the book, "One Answer to Cancer," does not present any "clear and present danger" to society and that no evidence was introduced at the trial court which would support a finding of any danger much less a "clear and present danger." That even if the publication constitutes the practice of medicine, the guarantee of free speech and freedom of the press set forth in the Texas Constitution and the United States Constitution overrides the interests of the State to suppress or prohibit this publication.

We are of the opinion that the testimony of Dr. Jones as well as that of the defendant, Kelley, is more than sufficient evidence to support the holding that continued distribution of the book, directly or indirectly by the defendants, would constitute a grave, immediate threat of irreparable harm and a clear and present danger of physical or mental injury or harm to the members of the general public.

The argument of the defendants to the effect that assuming the pamphlet does constitute the practice of medicine their right of free speech overrides the State's interest and right to protect the general public is untenable.

It is the practice of medicine by an unlicensed person which creates an immediate danger to the public and entitles a Court of the State of Texas as a matter of law and equity to enjoin such unauthorized activities, so as to reasonably protect the public from unauthorized and unskilled practitioners.

By authority of Article 16, Section 31 of the Texas Constitution, and the general police power, the Legislature has defined the practice of medicine and has enacted rules

and regulations governing the practice thereof. It is the right and duty of the State to regulate and control medical practice, so that the public safety and welfare will be served and promoted. The injunction is a permissible remedy authorized by the Medical Practice Act if such a remedy is the only reasonable means to accomplish the purposes of the Act.

The constitutional rights of speech and publication are not absolute and in a given case where the public interest is involved, Courts are entitled to strike a balance between fundamental constitutional freedom and the State's interest in the welfare of its citizens. The constitutional guarantee of freedom of expression must yield in the case at bar to afford reasonable protection to the public. Palmer v. Unauthorized Practice Com. of State Bar, 438 S.W. 2d 374, supra; Article I, Sections 8 and 16, Constitution of Texas; Gitlow v. New York, 268 U.S. 652, 666, 668, 45 Sup. Ct. 625, 69 L. Ed. 1138 (1925).

To hold otherwise would permit the defendant Kelley, to transfer his unauthorized practice of medicine to the pamphlet, "One Answer to Cancer," which contains advertising material which endows him as the author with consummate skills and knowledge beyond the reach of all other licensed medical doctors or physicians and glorifies him as the answer to prayers. By the device of such a transfer the defendant, Kelley, would attain the protection of a shield which would protect him forever against the power of the court to reach him and thus put a stop to his unlawful practice of medicine.

Again a holding to the contrary would provide the defendant, Kelley, with two doors to his office. One door marked "Dentist" would lead to a waiting room where Kelley, as a licensed dentist, could lawfully examine and treat within the limitations of such practice. A second door marked, "Kelley Research Foundation, Inc." or "One Answer to Cancer," will as the pamphlet entreats and urges lead a prospective patient into the same waiting room (as the door market "Dentist") where the defandant, Kelley,

may examine, treat and prescribe and thus engage in the unlawful practice of medicine by doing what he says he can and will do in his book, "One Answer to Cancer."

There is no inherent right to practice medicine. The State through its legislative arm has the authority to license, regulate and control such practice. The courts are authorized to enforce the laws enacted by the legislature.

The rights of speech and publication are not absolute. In a given case in which the public interest is involved the courts are entitled to balance fundamental freedoms and the interest of the State and the welfare of its citizens.

The defendant, Kelley, as the author of, "One Answer to Cancer," clearly intends by the language employed that the purchasers of his book shall act upon the basis of his medical and health advice and he solicits such purchases by his patients through the use of such language.

It would be a useless gesture to permit the defendant, Kelley, individually or d/b/a The Kelley Research Foundation, Inc., neither of whom is licensed as medical doctors to engage in the business of selling and distributing medical advice and offering diagnoses and treatment to the public when under the Texas Medical Practice Act Kelley could not personally do so.

It would be senseless to permit Kelley to continue in such activities free of any control of the court.

The issuance of an injunction against the defendant, Kelley, alone would be wholly ineffective to stop the unlawful practice of medicine if the other defendant was permitted to continue with the sale and distribution of the objectionable pamphlet, "One Answer to Cancer."

All points of error are overruled. The judgment of the trial court is affirmed.

/s/ JACK M. LANGDON

Jack M. Langdon,
Associate Justice.

May 7, 1971

APPENDIX B

No. 59197C

TEXAS STATE BOARD OF MEDICAL EXAMINERS,
Plaintiff,

v.

WILLIAM DONALD KELLEY, Individually, and D/B/A
The Kelley Research Foundation, and
The Kelley Research Foundation, Inc., Individually,
Defendants.

IN THE DISTRICT COURT
TARRANT COUNTY, TEXAS
17TH JUDICIAL DISTRICT

JUDGMENT

On the 30th day of July, 1970, there came on to be heard the above entitled and numbered cause wherein Plaintiff, the Texas State Board of Medical Examiners, seeks a permanent injunction against the Defendants, William Donald Kelley, Individually and d/b/a The Kelley Research Foundation, and The Kelley Research Foundation, Inc., Individually, and in which cause the Plaintiff had theretofore been granted a temporary injunction against the said Defendants; and both parties appeared by and through their respective attorneys and announced ready for trial and no jury having been demanded; and the parties having agreed and stipulated as to the evidence, and it being shown to the Court that the parties hereto have agreed that judgment should be entered by this Court after due consideration of the record including other evidence which has been made a

matter of record in this cause and the statement of facts adduced at the temporary injunction hearing, and the court proceeded to consider the cause; and the court finds and is of the opinion that the temporary injunction heretofore granted should now be perpetuated and that the Defendants should be permanently enjoined as hereinafter provided, for the reason that the Defendants have violated the provisions of the Medical Practice Act of Texas by practicing medicine without a license and will probably continue to do so, all of which is calculated to be, and is, injurious and dangerous to the health, safety and welfare of the public, and such activities of the Defendants as hereinafter prohibited present a clear and present danger of immediate irreparable injury and harm, should the hereinafter provided injunction be not granted; and further, that the contents of a publication entitled "One Answer to Cancer" authored by Defendant, William Donald Kelley, and copyrighted by the Defendant, The Kelley Research Foundation, Inc., professes and would lead the average reasonable individual who reads it to believe that the Defendant, William Donald Kelley, is a licensed medical practitioner under the laws of the State of Texas and that the Defendants, separately and individdually, are able to diagnose, treat, or are offering to treat a disease or disorder, physical deformity or injury or offering to effect cures thereof by charging therefor, directly or indirectly, money or other compensation; that the said publication is calculated to, and in fact does, aid and abet the said Defendants in their unlawful practice of medicine contrary to the express language and the spirit of Article 4510, R.C.S. of Texas, as amended; that the contents of said publication are tantamount to a diagnoses, treatment, or offer to treat a disease or disorder, physical deformity or injury or an offer to effect cures thereof by charging therefor, directly or indirectly, money or other compensation, by Defendants, who are unlicensed in the practice of medicine as defined by the Medical Practice Act, Title 71, Chapter 6, Article 4495-4512, Revised Civil Statutes of Texas.

Therefore, it is accordingly, ORDERED, ADJUDGED and DECREED that the Defendant; to wit, William Donald Kelley,

be, and he is hereby, permanently restrained and enjoined, from practicing medicine in the State of Texas without a license as required by the Medical Practice Act, Title 71, Chapter 6, Article 4495-4512, Revised Civil Statutes of Texas, as amended, and he is hereby particularly restrained and permanently enjoined from publicly distributing, offering for distribution, offering to sell or selling any publication, including the contents of a publication or booklet entitled "One Answer to Cancer" or any other publication, which aids and abets Defendants, William Donald Kelley, and The Kelley Research Foundation, Inc., in the commission of the unlawful practice of medicine by expressly and impliedly proposing to diagnose, treat, or offer to treat a disease or disorder, physical deformity or injury, or offer to effect cures thereof; or from personally diagnosing, treating or offering to treat a disease or disorder, physical deformity or injury, or offering to effect cures thereof, charging therefor, directly or indirectly, money or other compensation.

It is further ORDERED, ADJUDGED and DECREED that the Defendant, to wit, The Kelley Research Foundation, Inc., be, and it is hereby permanently restrained and enjoined, from practicing medicine in the State of Texas without a license as required by the Medical Practice Act, Title 71, Chapter 6, Article 4495-4512, Revised Civil Statutes of Texas, as amended, and it is hereby particularly restrained and permanently enjoined from engaging in the practice of medicine within the State of Texas, to wit, from publicly distributing, offering for distribution, offering to sell or selling any publication which aids and abets Defendants, The Kelley Research Foundation, Inc. and William Donald Kelley, in the commission of the unlawful practice of medicine by expressly or impliedly professing to diagnose, treat or offer to treat a disease or disorder, physical deformity or injury, offer to effect cures thereof; or from diagnosing, treating or offering to treat a disease or disorder, physical deformity or injury, or offering to effect cures thereof and charging therefor, directly or indirectly, money or other compensation; and Defendant, Kelley Research Foundation, Inc., is hereby further and permanently enjoined and restrained

from, and shall desist, from practicing medicine in any manner as defined by Article 4510, Revised Civil Statutes of Texas, as amended, 1925.

However, it is hereby specifically provided that the Defendants, William Donald Kelley, Individually and d/b/a The Kelley Research Foundation, and The Kelley Research Foundation, Inc., are not, hereby, restrained or enjoined from publicly distributing, offering for distribution, offering to sell or selling any publication, the subject matter of which deals and is solely confined to the practice of dentistry, as defined in Title 71, Chapter 9, Articles 4495-4512, Revised Civil Statutes of Texas, as amended.

Plaintiff, Texas State Board of Medical Examiners, is exempted from filing a bond herein, and it is further ordered, adjudged and decreed that such writ of permanent injunction issue without the filing of any bond herein.

The clerk of this court is hereby ordered and directed to issue forthwith a writ of permanent injunction in accordance with the terms of the injunction hereinabove set forth.

It is further ORDERED that the Plaintiff, Texas State Board of Medical Examiners, do have and recover of and from the Defendants, all costs herein, for which execution shall issue.

Whereupon in open court Defendants gave Notice of Appeal to the Court of Civil Appeals.

Signed and entered this 30th day of July, 1970.

/s/ WALTER E. JORDON

Judge Presiding

APPENDIX D

NEW YORK TIMES

Protein Cut Said to Aid Cancer Defense

Special to The New York Times

ATLANTIC CITY, Oct. 20 (AP) — Dr. Robert A. Good, a leading immunologist, said today that he had been able to induce resistance to certain forms of cancer in animals by reducing the amount of protein in their diet.

Dr. Good, a pediatrician at the University of Minnesota, said that as a result of the findings, which raise questions about the role of diet in human cancer, the World Health Organization in Geneva had set up a group to study the relationship between the diets in various countries and the individual's natural defense mechanisms against disease.

In a news conference at the annual meeting of the American College of Surgeons, Dr. Good said that he and his colleagues had been able to foster resistance in certain breast and blood cancers in rats and mice "by just reducing the amount of protein in the diet."

However, too great a protein reduction can produce susceptibility to cancer in the animal experiments, Dr. Good cautioned.

Limited protein deprivation inhibits the production in the body of a substance, called "blocking antibody," that interferes with the body's normal defense mechanisms against cancer and other diseases, Dr. Good said.

High levels of blocking antibody have been found in the blood of persons with cancer, he said, but are absent in normal persons without evidence of cancer.

Dr. Good said that his laboratory was expanding its investigation into the role of diet, and was beginning to look at the roles of total calories, various vitamins, minerals and amino acids in cancer.

Article on Rodent Study

Dr. Good's report to the surgery meeting followed an article last June that he published in the British journal Nature with Dr. David G. Jose, also of the University of Minnesota. The studies with Dr. Jose showed that normally fed animals developed a gamma globulin antibody, IgG, that prevented immune cells from destroying cancerous tumors in the animals.

However, they found that in malnourished rodents, little of this IgG was produced, but that production of the immune cells was normal, making it easier for the underfed animals to reject the cancer.

The doctors suggested in the Nature article that ultimately "it seems possible by nutritional or metabolic manipulation that such a mechanism could open the way to successful immunotherapy of human tumors."

Other scientists working in this area have reported similar findings.

Dr. Roy L. Walford of the University of California School of Medicine in Los Angeles reported last August that rats and mice fed a diet containing just one-third the normal level of calories live up to twice as long as normal and developed 10 to 60 per cent fewer cancers than better-fed animals.

He said his work suggested that man should eat considerably less than he now does, provided he maintained a proper intake of vitamins and minerals.

The relationship between feeding levels and cancer in animals supports a medical observation made over the years that obese people seem to have a greater tendency to develop cancer than do normal-weight individuals.

NEW YORK POST 10/26/71

Says 'Supernutrition' Could Curb Disease

WASHINGTON (AP) — A University of Texas scientist who says he has starved rats by stuffing them with commercial white bread claimed today that proper nutrition might prevent cancer and other diseases.

Dr. Roger J. Williams said supernutrition — a word he coined for nutrition beyond "good" nutrition and unrelated to calories — deserves investigation as "a strategy for the control of disease."

But much remains to be discovered on what constitutes supernutrition, Williams added in a speech prepared for the National Academy of Sciences.

Williams, a biochemist, stirred up considerable controversy after he had told the academy last year that two-third of a group of rats he fed only commercial white bread died within 90 days of malnutrition and that the remainder were severely stunted.

Among his critics were C. Mast Jr., president of the Millers National Federation, and Dr. William B. Bradley, president of the American Institute of Baking.

Mast charged that the experiment was meaningless because the nutritional needs of rats and humans were far different. Bradley said nutritional needs of a person were satisfied by a wide variety of foods and no single food supplied all of man's nutrients.

In today's report to the academy, Williams said the presence of significant unknown nutrients in uncooked food has long been suspected.

Several years ago, Williams said, "we carried out an experiment related to supernutrition. A group of mice already receiving a commercial stock diet, supposedly well supplied with all nutrients, including pantothenic acid, were given an extra supply of calcium pantothenate in their drinking water."

"The result was an increased longevity of about 19 per cent. If this result is achieved by strengthening only one link in the chain, one can legitimately expect the result to be even more striking if one attempted to strengthen all the links," Williams added.

Therefore, Williams said, it seems probable that diseases such as muscular dystrophy, multiple sclerosis and cancer could be prevented by expert application of supernutrition, especially if it could be started with vulnerable individuals at an early age.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

* * *

NO. 71-962

* * *

WILLIAM DONALD KELLEY, ET AL,
Petitioners

v.

THE TEXAS STATE BOARD OF MEDICAL EXAMINERS
Respondent

* * *

On Writ of Certiorari to the Fort Worth Court of Civil Appeals (Second Supreme Judicial District) and the Texas Supreme Court

* * *

RESPONDENT'S BRIEF IN OPPOSITION

* * *

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

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NO. 71-962

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WILLIAM DONALD KELLEY, ET AL,
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v.

THE TEXAS STATE BOARD OF MEDICAL EXAMINERS
Respondent

* * *

On Writ of Certiorari to the Fort Worth Court of Civil Appeals (Second Supreme Judicial District) and the Texas Supreme Court

* * *

RESPONDENT'S BRIEF IN OPPOSITION

* * *

TO THE SUPREME COURT OF THE UNITED STATES:

Now comes the Texas State Board of Medical Examiners, Respondent, and files its response to Petitioner's petition for Writ of Certiorari.

OPINIONS BELOW

The opinion of the Texas Court of Civil Appeals at Fort Worth was delivered on May 7, 1971, and is reported at 467 S.W. 2d 539 (Tex.Civ.App., 1971). Application for writ of error to the Texas Supreme Court was refused without opinion with the notation of "no reversible error" on October 6, 1971, rehearing denied, November 3, 1971.

JURISDICTION

The jurisdiction of this Court is invoked by petitioner under 28 U.S.C., Section 1257 (2) and (3). The jurisdictional requisites would appear to be adequately set forth in the petition although Respondent disputes Petitioner's contentions that any rights guaranteed by the United States Constitution have been violated.

QUESTIONS PRESENTED

The questions presented by Petitioner may be condensed into one question:

Whether the guarantees of free speech and freedom of the press by the First and Fourteenth Amendments to the Constitution of the United States preclude the injunction against the continued distribution of the booklet entitled "One Answer to Cancer" which was found to present a clear and present danger to society and to constitute the unlawful practice of medicine.

CONSTITUTIONAL PROVISIONS INVOLVED

Petitioner contends that the State Trial Court Injunction affirmed by the Fort Worth Court of Civil Appeals violates his First Amendment right of free speech and freedom of the press made applicable to the State by the Fourteenth Amendment to the United States Constitution.

STATEMENT OF THE CASE

The opinion of the Court of Civil Appeals for the Second Supreme Judicial District of Texas at Fort Worth correctly states the nature and result of this suit. 467 S.W.2d 539-547 (Tex.Civ.App. 1971, error ref., n.r.e.)

ARGUMENT AND AUTHORITIES

A. BALANCING OF INTEREST IS THE TEST; THE ABSENCE OF PRIOR RESTRAINT; APPLICATION OF THE CLEAR AND PRESENT DANGER DOCTRINE.

The injunction against petitioner, William Donald Kelley, individually, and d/b/a the Kelley Research Foundation, Inc., a corporation, for practicing medicine without a license and against distribution of the booklet "One Answer to Cancer," authored by William Donald Kelley and sponsored by the Kelley Research Foundation, are based on extensive findings of fact and conclusions of law. These findings and conclusions are supported by the record. Distribution of the booklet was found to be an integral part of the illegal practice of medicine as well as the practice of medicine in and of itself. Further publication, sale and/or distribution of the booklet was enjoined as a necessary remedy to protect the public.

Petitioners present a tenacious argument about enjoining a publication and allege the evils of "prior restraint" and the necessity of meeting the test of "clear and present danger." However, this case involves much more than the mere publication of ideas, and in no way involves a prior restraint of the booklet "One Answer to Cancer." What is involved is the further publication, distribution or sale by Petitioners, of the booklet "One Answer to Cancer," found by the State courts to constitute the practice of medicine, and when considered in conjunction with the other activities of the Petitioner, found to be a tool by which Petitioners furthered their illegal practice of medicine.

Such illegal activities have never been protected as free speech.

Therefore, the guarantees of free speech and freedom of the press made by the First and Fourteenth Amendments to the Constitution of the United States in no way preclude the injunction against the continued distribution of the booklet entitled "One Answer to Cancer."

As pointed out by the Court of Civil Appeals of Texas in its opinion, the arguments and brief of Petitioners indicate their primary concern to pertain to the prohibition of the publication and distribution of the booklet "One Answer to Cancer," whereas the State's primary concern has been the whole course of illegal activities of Petitioners. The booklet "One Answer to Cancer" was found to be an integral part of the whole course of illegal activities of the petitioners.

As aptly expressed by the court in the case of *Government of the Virgin Islands v. Broadhurst*, 285 F. Supp. 831, 837 (D.C. V.I., 1968):

> "It is not easy to define the permissible limitations on the constitutional right or to derive from the decisions generally applicable standards. While it is settled that the constitutional rights of freedom of speech and of the press embrace the liberty to discuss publicly and truthfully all matters of public concern without previous restraint or fear of subsequent punishment, it remains true that where the line is to be drawn in a particular case does not rest on generalities but rather on the concrete clash of particular interests and the community's relative evaluation, both of these interests and of how the one will be affected by a specific restriction and the other by its absence."

In *Jones v. City of Opelika*, 316 U.S. 584, 593 (1942), this court stated:

> "They are not absolutes to be exercised independently of other cherished privileges, protected by the same organic instrument. Conflicts in the exercise of rights arise, and the conflicting forces seek adjustments in the courts, as do these parties, claiming on the one side the freedom of religion, speech and the press, guaranteed by the Fourteenth Amendment, and on the other the right to employ the sovereign power explicitly reserved to the State by the Tenth Amendment to ensure orderly living, without which constitutional guarantees of civil liberties would be a mockery."

Thus, any attempt to restrict those liberties of free speech, religion, or free press must be justified by a clear public interest, treated not doubtfully or remotely, but by clear and present danger. *Thomas v. Collins*, 323 U.S. 516 (1945); *Schenck v. United States*, 249 U.S. 47 (1919). The "clear and present danger" doctrine is not a mechanical test applicable in every case touching First Amendment freedoms, without regard to the context of its application. *American Communications Association v. Douds*, 339 U.S. 382 (1950).

The Court in the *Douds* case pointed out that when the effect of a statute or ordinance upon the exercise of First Amendment freedom is relatively slight and the public interest to be protected is substantial, a rigid test requiring a showing of imminent danger to the security of the nation is an absurdity. When particular conduct is regulated in the interest of public order and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular

circumstances presented. Legitimate attempts to protect the public, not from the remote possible effects of noxious ideologies, but from present excesses of direct active conduct, are not presumptively bad because they interfere with, and in some of their manifestations, restrain the exercise of First Amendment rights. In essence, the problem is one of balancing the probable effects of the statute upon the free exercise of the right of speech and assembly against the legislative determination that certain evil conduct should be suppressed. See Annotations: The Supreme Court and The Right of Free Speech and Press, 93 L.Ed. 11551; 2 L.Ed. 2d 1706; 11 L.Ed. 2d 1116, 1120-1121.

Recognizing the fact that under the Federal Constitution the rights of freedom of speech and press are not unlimited, and that under a proper state of facts state courts are vested with the authority to enjoin and punish certain conduct, as well as speech, this court and other federal and state courts have held that the States are vested with the authority to enjoin picketing by a labor organization to protect the rights of the citizens, when such picketing in enmeshed with violence, or where it involves such conduct as the state is authorized to declare unlawful, or is a breach of laws necessary for the protection and welfare of people. *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 787 (1941); *Borden Co. v. Local No. 132, etc.*; 152 S.W.2d 828 (Tex.Civ.App. 1968, error ref., n.r.e.); *Local Union No. 858 of Hotel Restaurant Employees International Alliance, et al., v. Jiannas, et al.*, 200 S.W.2d 763 (Ark.Sup. 1947); *Cain, Brogden & Cain v. Local Union No. 47, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers*, 285 S.W.2d 942 (Tex.Sup. 1956); *Texas State*

Federation of Labor v. Brown & Root, Inc., 246 S.W.2d 938 (Tex.Civ.App. 1952, error ref., n.r.e.); *Inc. v. Wilson*, 166 A.2d 271 (Pa.Sup. 1960); *Starr v. Cooks, Waiters, Waitresses, and Helpers Union*, 70 N.W.2d 873 (Minn.Sup. 1955); *Wright v. City of Montgomery, Alabama*, 406 F.2d 867 (5th Cir. 1969).

Justice Frankfurter, in the *Meadowmoor* case, quoted with approval from the opinion in *Carlson v. State of California*, 310 U.S. 106, 113 (1940), "the power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives and the property of its residents cannot be doubted." In accord with this reasoning are the cases of *Smith v. Womack*, 271 S.W. 209 (Tex.Crim. 1925); *Ex Parte Warfield*, 50 S.W. 933 (Tex.Crim. 1899). In *Pashko v. Pashko*, 101 N.E.2d 804 (Ohio Ct. Common Pleas, 1951), the court held that the restraining of a defendant in a suit for the partial alienation of a wife's affection, and from conversing with or writing to her in any way, or associating with her, was not inconsistent with freedom of speech, or the press, or of locomotion. See *Governmen tof Virgin Islands v. Broadhurst, supra*, wherein the Court upheld the legislative decision that the rehabilitation goals of juvenile law are so important as to override the right of the press to identify juvenile defendants. In *In Re Gault*, 387 U.S. 1 (1966), this court gave implicit approval to such restrictions on First Amendment rights.

In other instances, courts have held that a person may be punished for his religious views when, through external conduct, such views are put into practice which are fraught with clear and present danger to the safety, morals, health and general welfare of the

community and in violation of laws enacted for their protection. *Jones v. City of Opelika, supra, Baxley v. U.S.*, 134 F.2d 937 (4th Cir. 1943); *United States v. Kuch*, 288 F.Supp. 439 (D.C.D.C. 1968); *People v. Estep*, 104 N.E.2d 562 (Ill.App.Ct., 1957); *Hopkins v. State*, 69A 2d 465 (Md.Ct.App. 1949). Otherwise, as stated by the Supreme Court in *Reynolds v. United States*, 98 U.S. 145, 167 (1878), "to permit this would be to make the professed doctrines of religious beliefs superior to the laws of the land and in effect to permit every citizen to become a law unto himself."

Closely akin to these cases are those cases wherein symbolic speech has been restricted by requiring that if one engages in conduct aimed to be symbolic speech, he must limit himself to lawful conduct. One is not entitled to commit criminal acts with impunity even in order to communicate ideas. *United States v. O'Brien*, 391 U.S. 367 (1968); *United States v. Eberhardt*, 417 F.2d 1009 (4th Cir. 1969); *People v. Street*, 20 N.Y. 2d 231 (N.Y.App. 1967). Neither is obscenity, libelous utterances, or insulting or fighting words within the area of constitutionally protected speech or press and therefore may be prevented or punished when spoken or published. *Roth v. United States*, 354 U.S. 476 (1957); *Fine Arts Guild, Inc. v. City of Seattle*, 445 P.2d 602 (Wash. Supp. 1968); *Beauharnais v. People*, 343 U.S. 250 (1952); *City of Portland v. Derrington*, 451 P.2d 111 (Ore.Supp. 1968).

Clearly, the police power of the State extends to the regulating of trades and callings concerning public health, and practitioners of medicine are properly subject to police regulation. The details of regulation are primarily with the legislature, and are not to be inter-

fered with by the Federal Courts so long as fundamental constitutional rights are not violated. *Dent v. West Virginia,* 129 U.S. 114 (1899); *Watson v. State of Maryland,* 218 U.S. 173 (1910). The legislature of any state may make reasonable classifications of practitioners. *Pollemus v. American Medical Association,* 145 F.2d 357 (10th Cir. 1944); *People v. Galway,* 260 P.2d 212 (Calif.App. 1953); *Lee Optical of Oklahoma v. Williamson,* 120 F.Supp 128 (W.D. Okla. 1954). *People v. Handzik,* 102 N.E.2d 340 (Ill.Sup. 1951). It is also true that the legislature may make reasonable classifications of practitioners in the medical field and that such classifications are not inhibited by the provisions of the Fourteenth Amendment to the Federal Constitution. *Ex Parte Halstead,* 182 S.W.2d 479 (Tex.Civ.App. 1944).

Whether the guarantees of free speech and freedom of the press precludes the injunction against the continued distribution of the booklet entitled "One Answer to Cancer," which was found to present a clear and present danger of a substantial evil which the legislature of Texas has a right to prevent, and which was found to constitute the unlawful practice of medicine, must depend upon a judicial determination of the scope of the First and Fourteenth Amendments as applied to the circumstances of this case.

B. THE ILLEGAL PRACTICE OF MEDICINE AND THE PRESENCE OF A DOCTOR PATIENT RELATIONSHIP.

In construing the Texas Medical Practice Act, Article 4510, Vernon's Civil Statutes, and in determining what constitutes the practice of medicine thereunder, it has been the long and consistent holding of the Texas

Courts, as stated in *Ex Parte Halstead*, 182 S.W.2d 479, 483:

> "that one who publicly professes to treat diseases or disorders, and to effect cures thereof, or one who in fact treats diseases or disorders as a profession or a vocation is practicing medicine regardless of the system or method employed, the name by which the system is known or whether or not drugs or surgery are used. The practice of medicine as contemplated is defined by laws not restricted to the treatment of diseases or disorders of the human body by the use of drugs or surgery." 182 S.W.2d 479, 483.

The evidence in this case undisputedly shows the Petitioner, Dr. William Kelley, to have practiced medicine, as defined above, and that his activities were not restricted solely to the practice of dentistry as defined by Articles 4543, et seq. (Appended is a copy of the Statement of Facts, a part of the official record in this cause, to be made a part of this brief in opposition to Petitioners writ of certiorari).

The fact that the Petitioner, Dr. William Kelley, was a duly licensed dentist, did not authorize him to practice medicine. Admittedly, a dentist who publicly represents himself as a dentist is excepted from the law requiring a certificate for the practice of medicine, but when he represents himself as a physician by publicly professing to diagnose, treat and effect cures, or is in fact diagnosing, treating and effecting cures for pay, he is not within the exception provided by law, as it applies to dentists. Nor does the booklet "One Answer to Cancer" simply attempt to put forth Dr. Kelley's ideas on the subject of cancer. Its contents and textual material and the statements made therein

by Petitioner in afid of itself constitutes a "public profession" of the practice of medicine by the Petitioner. It is the combined effect of the entire booklet, and not just the front page, which led the trial court to conclude that said booklet represented a "public profession" of the practice of medicine. (Petitioners Appendix C; Statement of Facts, p. 22, 39, 59, 162, 175).

The Petitioner argues that the booklet "One Answer to Cancer," when applying the provisions of the Medical Practice Act, is not a publication which constitutes the practice of medicine in any form.

Respondent would submit that the trial court and Court of Appeals properly found that the publication "One Answer to Cancer" is a diagnosis, treatment, and offer of treatment, and therefore constitutes the practice of medicine. (Petitioners Appendix C, Statement of Facts, p. 21, 39, 59, 162, 175). The conclusion that the publication constitutes an advertising scheme wherein Dr. William Kelley solocits medical patients is supported by the evidence presented by Albert Crites and John Sortore, as well as by the publication itself. It was stated by both Albert Crites (Statement of Facts, p. 74, 75, 86, 92, P.Ex. #7) and John Sortore (Statement of Facts, p. 127, 128, 116) that they received a copy of "One Answer to Cancer" upon the payment of $1.00, as well as an examination and lab test for $50.00, while being treated by Dr. Kelley. The record fully supports the findings that Petitioners have utilized the booklet "One Answer to Cancer" as an advertising scheme, with which to secure individuals as patients, to enable Petitioners to diagnose, treat, or offer to treat a disease or disorder, physical deformity or injury, by a system or method described within said

book, attempting to effect cures thereof, and for which such patients were charged directly or indirectly.

The continued distribution of the book, directly or indirectly, by the Petitioners, would constitute a grave and immediate threat of irreparable harm: a clear and present danger of physical or mental injury or harm to the general public. (Petitioners Appendix C, Statement of Facts, p. 20, 160, 167, 176). Such a threat would continue to exist although Petitioners individually may be enjoined from the practice of medicine. (Petitioners Appendix A, page 11.) The publication is being used as an illegal tool to aid and abet the unlawful practice of medicine when actual doctor-patient relationships are being formed. Therefore, the case of *New York County Lawyers' Assn. v. Dacey*, 287 N.Y.S.2d 422, 234 N.E.2d 459 (1967), adopting the dissenting opinion in 283 N.Y.S.2d 984 (1967), cited by Petitioner is not in point. However, the case of *Grievance Committee of Bar of Fairfield County v. Dacey*, 154 Conn. 129, 222 A.2d 339 (1966), is in point, in that an attorney-client relationship was present and the Connecticut Court enjoined the further sale and publication of legal forms and the appeal was dismissed by the U.S. Supreme Court for want of a substantial federal question. 386 U.S. 683 (1967.)

Therefore, Respondent would submit that the state trial court and the Fort Worth Court of Civil Appeals of Texas did nothing but enter and approve of a judgment that was necessary for the reasonable protection of the public and was therefore proper and not in violation of any of Petitioner's constitutional rights of free speech under the Texas Constitution or the United States Constitution. Therefore, the Court was justified

in extending the injunction to the further distribution, publication and sale of the booklet "One Answer to Cancer."

The Petitioner further argues that the booklet, "One Answer to Cancer" does not present any "clear and present danger to society and that no evidence was introduced at the trial court which would support a finding of any danger much less a "clear and present danger." That even if the publication constitutes the practice of medicine, the guarantee of free speech and freedom of the press set forth in the Texas Constitution and the United States Constitution overrides the interests of the State to suppress or prohibit this publication.

Respondent submits that the testimony of Dr. Jones (Statement of Facts, p. 176, and Petitioner's Appendix C) as well as Dr. Kelley's own testimony (Statement of Facts, p. 20) is more than sufficient evidence that continued distribution of the booklet, directly or indirectly by the Petitioners, would constitute a grave, immediate threat or irreparable harm to the general public.

Petitioner's argument, that even if the publication constitutes the practice of medicine, free speech overrides the State's interest in protecting the general public, is contrary to the Texas Constitution as well as the Texas law, and has no support under the First or the Fourteenth Amendments to the Constitution of the United States.

It is the practice of medicine by an unlicensed person which creates an immediate danger to the public, which justifies the Court of the State of Texas as a matter

of law and equity to enjoin such unauthorized activities, so as to reasonably protect the public from quacks.

By authority of Article 16, Section 31, of the Texas Constitution, as well as the general police power, the Legislature has by law defined the practice of medicine and has presented rules and regulations governing the practice thereof. It is the right and duty of the State to regulate it and control it so that the public safety and welfare will be served and promoted. The enjoining of criminal conduct which the Legislature has a right to control is a permissible constitutional and legal remedy approved by said Medical Practice Act.

CONCLUSION AND PRAYER

In light of the foregoing circumstances and for the reasons advanced above, Respondent prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Robert C. Flowers, Assistant Attorney General of Texas, one of the Attorneys for Respondent, and a member of the Bar of the Supreme Court of the United States, certify that a copy of the foregoing Respondent's Brief and Opposition has been served on Petitioner by placing same in the United States Mail, postage prepaid to Petitioner's Attorney, Harry W. Margolis, Margolis & Staffin, 1226 Commerce Street, Dallas, Texas 75202, on this the _____ day of March, 1972.

ROBERT C. FLOWERS
Assistant Attorney General

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In the

Supreme Court of the United States

No. 71-962

WILLIAM DONALD KELLEY, et al,
Petitioners,

v.

THE TEXAS STATE BOARD OF MEDICAL EXAMINERS,
Respondent.

PETITION OF WILLIAM DONALD KELLEY, ET AL PETITIONERS' MOTION FOR REHEARING

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PETITION OF WILLIAM DONALD KELLEY, ET AL PETITIONERS' MOTION FOR REHEARING

To the Honorable Supreme Court of the United States:

Come now WILLIAM DONALD KELLEY and the KELLEY RESEARCH FOUNDATION, INC., Petitioners, and make this, their Motion for Rehearing, and would respectfully show unto the Court the following:

POINT ONE

There was no evidence to substantiate a prior restraint of the publication on the grounds that the publication was part of an overall plan or scheme.

POINT TWO

The injunction entered by the Trial Court was unconstitutionally broad and should be set aside as being repugnant to the First and Fourteenth Amendments to the Constitution of the United States. Alternatively, the injunction should be modified so as to conform to the Constitutional requirements.

The entire theme of the Respondent's Brief in this cause is to the effect that the publication in question as part of the Petitioners' overall scheme in practicing medicine, and that the injunction entered below was intended to curtail the entire practice of medicine, not just the publication. The State justifies the suppression of the publication on the grounds that the publication is a part of the Petitioners' overall conduct and is a tool used to further Petitioners' illegal practice of medicine. Accordingly, the State urges that the injunction is not directed merely at the publication, but rather incidentally at the publication as being necessary to regulate the entire field of practicing medicine.

To the contrary, Petitioners' approach in their Petition for Certiorari looked only toward the law applicable to suppressing the publication in and of itself without regard to the part that the publication played in the overall allegations by the State.

THE EVIDENCE

Assuming for the purposes of argument that suppression of the publication would be permitted, if in fact the publica-

tion was being used to further an overall scheme of Petitioners in which actual doctor-patient relationships were being formed, etc., Petitioners contend that the State had the burden to show by clear and convincing evidence the relationship of the publication to Petitioners' other alleged illegal activities. Without such a direct relationship, the enjoining of the publication would have no bearing on the other alleged activities, and would be no justification for the Petitioners' First Amendment rights to give way.

Turning to the evidence, one would expect to find testimony of various persons who read the Petitioners' publication, or at least heard of it, and then ended up in the Petitioners' offices for treatment. To the contrary, the State was unable to demonstrate that the publication had caused even one person to contact Dr. Kelley or to come into his office. In fact, the evidence fails to show that any individual ever saw or talked to Dr. Kelley as a result of the publication. It is difficult to see how the Court below, by any stretch of the imagination, could have found that the publication was being employed as an advertising device or was being used as a tool in an overall picture of an unlawful practice of medicine, when, in fact, a complete void of evidence existed in this area. Accordingly, Petitioners contend that the injunction cannot be sustained constitutionally on the "broad plan attack" set forth by Respondent in their brief, due to a complete lack of evidence in this area. (For obvious reasons, the two State agents contacted Dr. Kelley for reasons wholly outside of their having read the publication.)

SCOPE OF THE INJUNCTION

Assuming now, for purposes of argument, that the evidence was sufficient to warrant the injunction in accordance with the Respondent's "broad plan attack" that the publication was an integral part of an overall scheme, Petitioners contend that the terms of the injunction are unconstitutionally broad. This contention is premised on the fact that under the terms of the injunction, even if Petitioners do not practice medicine in any form or respect, and even if the publication is not used as part of an overall plan or scheme in the future, but is simply used as a publication to disseminate Dr. Kelley's ideas and nothing else, the injunction prohibits such use and distribution.

The Respondent's argument retains its credence only so long as the publication continues to be part of an overall plan. When the injunction below effectively eliminated all other parts of the plan, this then left open the question as to whether or not the publication, standing alone, could also be enjoined.

At this point, all of the arguments and authorities set forth in Petitioners' Application for Certiorari come in to focus, and the approach of looking at the publication separate and apart from the other activities alleged becomes applicable. It is also at this point that the injunction demands that the publication be suppressed even if the Petitioners will not or do not participate in the other various acts alleged, and even if the publication will not be used as an advertising mechanism or as part of an overall plan to aid

and abet the practice of medicine. The State has done far more than simply to enjoin the publication as part of an overall picture. Rather, the State has used the alleged overall picture as an excuse to justify the accomplishment of their main objective, that being the suppression of the publication itself without regard as to whether the other alleged facts and circumstances have in actuality existed in the past or will continue to exist in the future.

Petitioners urge this Court to view the injunction as having effectively disposed of the other alleged activities of Petitioners, and having so disposed of same, to have gone one step further by violating the Petitioners' First Amendment rights with the suppressing of the publication in question. It would have been a very simple matter for the Trial Court to have enjoined Petitioners from using the publication as an advertising scheme, as a device to aid or abet the unlawful practice of medicine, etc., which would have amply provided the State with the protections that the State claims it seeks; but to go further than this and to prohibit, in its entirety, the right of the Petitioners to disseminate their ideas, is a direct violation of Petitioners' First Amendment rights in accordance with the authorities cited in the Petitioners' original application.

Alternatively, should the injunction not be dissolved for the reasons aforesaid, then Petitioners respectfully request this Honorable Court to modify the terms of the injunction so as to afford the State the protection that they are allegedly seeking, by prohibiting the Petitioners' use of the publication

as advertising material or as part of an overall plan etc., while at the same time modifying the injunction so as to permit the Petitioners to exercise their rights of freedom of speech and press in freely disseminating their ideas.

PRAYER

WHEREFORE, premises considered, Petitioners pray that this Motion for Rehearing be in all things granted, that the injunction heretofore issued be dissolved, or alternatively, that the injunction heretofore issued be modified by this Court so as to be in conformity with Petitioners' rights of freedom of speech and press as well as with the rights of the State of Texas and the Texas State Board of Medical Examiners.

Respectfully submitted,

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214-742-1341,

By _____
Harry W. Margolis
Attorneys for Petitioners.

CERTIFICATE OF SERVICE

I, HARRY W. MARGOLIS, Attorney of Record for Petitioners in the above cause, do hereby certify that I have, on this 1st day of June, 1972, sent by first class United States mail, postage prepaid, three copies of this Motion for Rehearing to the following attorney, being the attorney for Respondent, at the address indicated:

Mr. Guy C. Fisher
Assistant Attorney General
Capitol Building
Austin, Texas.

Harry W. Margolis

RULE 58 CERTIFICATE

I, Harry W. Margolis, Attorney of Record for the Petitioners in the above cause, do hereby certify that the foregoing Petition for Rehearing has been presented in good faith and not for delay, and that said petition has been confined to argument which the Petitioners have not previously presented to this Court, all in accordance with Rule 58.

Harry W. Margolis